SUPREME COURT OF THE UNITED STATES.

No. 140.

HUGH M. PATTON, ADM'R, AND HUGH M. PATTON ET AL., HEIRS OF ROBERT PATTON, DEC'D, APPT'S,

vs.

JAMES TAYLOR.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF KENTUCKY.

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Pleas before the honorable Thos. B. Monroe, one of the judges of the 8th circuit court of the United States, in and for the district of Kentucky, held at the capitol, in the town of Frankfort, at the May term thereof, A. D. 1845.

Jas. Taylor agst. Robert Patton's heirs, &c.

Be it remembered that heretofore, to wit, at a circuit court of the United Sates of America, held in and for the eighth circuit and district of Kentucky, at the November term thereof, and on the first day of December, A. D. eighteen hundred and twenty, (1820,) came James Taylor, by Henry Clay, esq., his counsel, and filed the following bill in ch'y, to wit:

Bill.

To the honorable judges of the circuit court of the United States for the Ky. district, in chy. sitting:

Humbly complaining, sheweth unto your honor, your orator James Taylor, a citizen of the State of Kentucky, that on the day of 1818, your orator purchased of a certain Robert Patton, a citizen of the State of Virginia, 2,000 acres of land, lying in Hopkins county, in this district, for which your orator agreed to pay to the said Patton $5,000, in two equal payments, the first on the 30th of January, 1819, and the second on the same day of the year 1820; for which he executed to the said Patton his two several promissory notes. That the said land was patented, by the State of Virginia or Kentucky, to Thomas Gaskins, and, by several mesne conveyances, the title thereto became invested in a certain Thomas Southcombe. That the said Patton executed to your orator a conveyance for the said land, containing a covenant, with general warranty. And at the time of the purchase aforesaid, and the execution of the said promissory notes, your orator entertained no doubt that the said Patton had a good title to the said land, and was enabled to convey the same to your orator; but now, so it is, may it please your honors, your orator has since discovered, that the said Patton has no title for the said land from the said Southcombe, who is dead, and whose heirs are unknown to your orator. That the said Patton has nevertheless commenced actions on the said notes, on the common law side of this court. And your orator, being unable to make defence at law, the said Patton has recovered judgments on the said notes. Your orator annexes hereto, as a part of this bill, a letter from the said Patton, acknowledging his defective title to the said land. That your orator has already made sundry payments on account of said notes. And he apprehends that the said Patton will proceed to enforce payment of the residue, unless prevented by the interposition of this honorable court, which would be contrary to equity. In tender consideration whereof, &c. To the end, therefore, that the said Robert Patton and the un-

known heirs of the said Thomas Southcombe (whom your orator prays may be made def'ts hereto) may, upon their oaths, make answer to this bill, as if the allegations thereof were repeated in the form of interrogatory. That the said def'dt, Patton, may show what right he has to the said land, and particularly from the said Southcombe; and if he is unable to exhibit or procure a good title, that the contract may be dissolved, and he decreed to refund to your orator the amount he has advanced on the said notes, with interest. That, in the *mesne* time, he may be enjoined from proceeding to enforce the said judgment at law; and that your orator may have such other and further relief as may be deemed agreeable to equity and good conscience.

May it please your honors, &c.

H. CLAY, *P. Q.*

I hereby release all errors at law.

JAMES TAYLOR.

November term, Dec'r 2, 1820.

Sworn to in open court.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

The following is the letter referred to as an exhibit in the foregoing bill "to wit:"

Fred'bg, 20th June, 1820.

Gen'l JAMES TAYLOR:

DEAR SIR: Hearing of your being in Washington in the spring, and calculating on a certainty of seeing you in this place, I was greatly disappointed at not having had some conversation with you during your stay, or previous to your departure from the city. By a letter just received from Mr. Talbott, covering a duplicate of one of yours to him of the 1st inst., wherein you say you will resist the payment of the bonds assigned Talbott by my son, when in Kentucky. This information has surprised and astonished me much. And surely, my dear sir, you will not persist in this course, but, on mature consideration, pay the amount. When I sold you these 2,000 acres of land, Southcombe had long been dead; hence, as his agent, which you know I was, I could not make a deed as such, but I did what you required. I made you a deed in my own name, with a general warranty, and no objection was made to this conveyance, until the money was required. I sent you the original patents by Murdock Cooper, of your State, and I now subjoin a short history of this land. Your 2,000 acres, together with 1,500 more, were granted Col. Gaskins for military services, by him sold to William Forbas, by Forbes sold to Robert Campbell, of Richmond, (once Hicks & Campbell,) and by Robert Campbell and Ann, his wife, conveyed to Thomas Southcombe; which last deed is in my possession. All Southcombe's matters have been settled long ago, when this land was rated at $2, and paid for by me. And *their* is not a human being has a shadow of claim to this land but myself; and I have secured it to you by my conveyance. We have long been acquainted; we have long

been friends. You have acted as my agent much to my satisfaction; and I have ever reposed the fullest confidence in your honor and integrity. Under these circumstances, it would give me great pain any misunderstanding should arise between us; and cannot help thinking that, on due consideration, you will change your course, and pay the bonds assigned Talbott, which was done under very peculiar circumstances, and may have placed that gentleman in a very disagreeable situation respecting them.

I am, dear sir, your most obed'nt serv't,

ROBT. PATTON.

And at the same term of the court aforesaid, and on the said first day of December, A. D. 1820:

Injunction granted.

On the motion of the complainant aforesaid, by his counsel, and upon bill filed, which was sworn to in open court, an injunction is granted him enjoining and restraining the defendant, his attorneys, the marshal, and all others concerned, from proceeding further upon a judgment at law, obtained at the present term of this court in favor of the said Patton against the said Taylor, until the matters thereof can be heard in equity, upon the complainant's executing bond, in the clerk's office of this court, with Hubbard Taylor, senr., in the penalty of ten thousand dollars, conditioned according to law.

And afterwards, to wit, on the same day, to wit, the first day of December, A. D. 1820, the said James Taylor, executed the following injunction bond in the clerk's office of said court, to wit:

Injunction Bond.

Know all men by these presents, that we, James Taylor, of Campbell county, and State of Kentucky, and Hubbard Taylor, senr., of Clarke county, and State of Ky., are held and firmly bound unto Robert Patton, of the town of Fredericksburg, and State of Virginia, in the just and full sum of ten thousand dollars; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this first day of December, 1820.

The condition of the above obligation is such, that whereas the above bound James Taylor hath prayed for and obtained an injunction, enjoining and restraining the said Robert Patton from further proceedings upon a judgment at law, obtained at the present November term of the 7th circuit court of the United States of America, for the Ky. district, 1820, in favor of the said Robt. Patton, against the said James Taylor, for the sum of five thousand dollars, besides interest and costs, and subject to certain credits there given, as by reference to said judgment entered in order book G, pages 340 and 341, will more at large appear.

Now, if the said James Taylor, shall well and truly prosecute the said injunction with effect, or, on failure thereof, pay the amount of said judgment with interest, and all damages and costs that may be

awarded against him, then this obligation to be void; otherwise to remain in full force and virtue.

JAMES TAYLOR, [SEAL.]
HUBBARD TAYLOR. [SEAL.]

Witness: JNO. H. HANNA.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of December, 1822, (until which time this cause was regularly continued on the rules,) came the defendant, Robt. Patton, by his counsel, and filed his answer to the complainants' bill herein, to wit:

The answer of Robt. Patton, to the bill of complaint of James Taylor, filed in the 7 circuit of the United States, for the district of Ky.

This defendant, saving and reserving to himself every benefit of exception which may or ought to be taken to the complainants' bill of complaint, for answer thereunto, or so much thereof as this defendant is advised is material or necessary for him to answer unto, he, answering, saith: That true it is, he sold two thousand acres of land, as in the bill mentioned, to the complainant, and received from him the two notes therein mentioned; that the land was patented by the State of Virginia to the said Thomas Gaskins, and the title thereto became vested in the said Thomas Southcombe, whose right and title in equity became vested in this defendant; the said Thomas Southcombe had made this defendant his agent, with a power of attorney to transact his business, and to sell and dispose of his lands; that this defendant purchased the said two thousand acres of land of the said Thomas Southcombe for two dollars per acre, and paid him therefor on a final settlement of their transactions; but this defendant, having a power of attorney to sell the land, did not take from him an immediate conveyance therefor, intending to sell the land, and convey the same, by virtue of the power of attorney from the said Thomas Southcombe, who, dying before this could be effected, and this defendant's authority to sell ceasing thereby, he admits he never received a conveyance of the legal title; but he is, nevertheless, justly entitled to the land in equity; that he took possession thereof more than twenty years ago, paid the taxes regularly ever since, and held the peaceable possession thereof until he sold the same to the complainant, who entered into the peaceable possession thereof, and hath actually sold a part thereof.

This defendant, further answering, saith: That for the space of years, the said complainant was his general agent for the payment of taxes on his lands in Ky., and well knew the nature of his titles in general, and was well apprised of the particular title of this defendant to the 2,000 acres, as aforesaid, sold to him, and well knew before and at the time he contracted for the purchase thereof of the defective link in the chain of title thereto, and accepted a deed, with general warranty, from this defendant for the land, and gave his notes for the purchase money, relying upon the warranty contained in the deed for indemnification in case of eviction, an event not apprehended, seeing that this

defendant had purchased and paid for the same, and had been in the uninterrupted possession thereof for more than twenty years, during which time no person has ever attempted to assert the least claim or title thereto, which removes all reasonable apprehension of there being any opposing or adverse claim.

And this defendant, further answering, saith: That not having heard from the complainant the least intimation to resist or object to the payment of the said notes, he, on the first day of July, 1819, received from the complainant a payment on account of one of the notes; and thereupon, with the knowledge, consent, and in the presence of said complainant, assigned and transferred the said notes to Theodore F. Tolbatt, of Lexington, to be by him collected and received for the use of a certain Robert Witherspoon, who held an assignment of a decree of this court against this defendant, and by whom and for whose use the said suits were commenced, and over which this defendant has no control whatever; and this defendant has no right to consent to a cancelment of the contract for the sale of the said land, so far as the same might affect the right of the said Witherspoon to enforce the payment of the said notes; and therefore prays to be hence dismissed with his costs by wrongfully sustained in this behalf.

Culpeper county, to wit:

This day personally appeared before me, a justice of the peace for the county aforesaid, Robt. Patton, of lawful age, and made oath that every thing stated in the within answer, upon his own knowledge, is true, and whatever is stated upon the information of others, he believes to be true.

Given under my hand and seal this 2d October, 1822.

WILLIAM BROADUS, Jr. [SEAL.]

Virginia, Culpeper county, to wit:

I, Thomas Walker Lightfoot, clerk of the court of Culpeper county, do hereby certify, that Wm. Broadus, jr., esq., before whom the foregoing answer appears to have been sworn to, is an acting justice of the peace in and for the county aforesaid, regularly commissioned and qualified, and that full faith and credit are due to all his acts as such, as well in courts of record as thereout.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said court, this 2d day of October, 1822, in the [L. S.] 47th year of the Commonwealth.

THOS. W. LIGHTFOOT.

Culpeper county, to wit:

I, Robert Slaughter, presiding or eldest magistrate of the county court aforesaid, do hereby certify, that the above named Thomas Walker Lightfoot is clerk of the court of said county, and that his certificate and attestation is in due form of law.

Given under my hand and seal this 2d day of October, 1822.

R. SLAUGHTER, Jr. [SEAL.]

Culpeper county, to wit:

I, Thomas Walker Lighfoot, clerk of the court of said county, do hereby certify, that the above named Robt. Slaughter, esq., is the presiding or eldest magistrate of county court aforesaid, and that full faith and credit is due to all his acts as such.

Given under my hand this 2d day of October, 1822.

TH. W. LIGHTFOOT, *C. C.*

And afterwards, to wit, at the May term of the court aforesaid, and on the 24th day of May, 1823, (until which time this cause had been regularly continued on the rules,) came the complainant aforesaid by his counsel, and on his motion leave is granted him to file an amended bill herein, which amendment was filed accordingly.

Which said amendment is as follows, to wit:

An amendment to the bill of James Taylor against Robert Patton.

Your orator further shows, that the contract for the purchase of the land from the defendant was made between the parties by letters; your orator agreeing to the purchase by a letter, under date the 30th January, 1818, addressed to the defendant at Fredericksburg. He annexes hereto a copy of the said letter, and calls upon the defendant to produce the original, and to say if the copy now exhibited is not a substantial copy thereof. He charges that, at the date of said letter, the defendant was supposed to be a man of opulence, and perfectly solvent, but has since failed and become insolvent.

He calls upon the defendant to exhibit and set forth what evidences he has from Thomas Southcombe, of his right to the land in controversy, and to say if he has any written evidence of his right, and if he has, to produce it. He also annexes hereto a copy of a letter from your orator to the defendant, under date 23d October, 1819, and calls upon the defendant to say if it be not a substantial copy, and to exhibit the original. He also annexes hereto a copy of a letter which he addressed to the defendant from Washington city, on the 29th February, 1820, and in like manner calls upon him to say if it be not a substantial copy of the said letter, and to exhibit the original.

H. CLAY,
For complainant.

The following are the copies of the letters referred to in the foregoing amended bill, to wit:

Frankfort, Ky., January 30, 1818.

DEAR SIR:—Mr. Thornton has shown me your memo. relative to your claim of land under D. Morgan; I assure you I have bestowed all the attention to it which was necessary; I have seen Mr. Marshall since I came to this place, and I saw him in Paris, where he resides, and spoke to him on the subject; he then told me he must go on with the suit in the name of Wm. Morgan's heirs, as there was still some defect in the papers, that you had the best security, that he would

do for the best, as he had an interest with you; but I remarked to him, that if the land was recovered in the name of Wm. Morgan's heirs, that to seek the title from D. Morgan's heirs, which you only could do by a suit, would delay your claim so long as to be equal to a relinquishment of your interest altogether; he did not give me the satisfaction I expected. Since I came here, I demanded of him the deed I forwarded to him, and declined giving it to me, saying, that he might yet conclude to use it; that he had lately received from Richard B. Lee, a paper which might be deemed sufficient to pass the title; I urged the matter warmly, saying, as I had done, that if you had to wait till this suit was over, and then commence one against D. Morgan's heirs, that I knew you would not be satisfied to do it if possible to avoid it; he appears to be averse to have any additional counsel. I shall still have an eye on the case, and advise you from time to time; but he will have his own way, and if I was to employ other counsel, it must be at your expense, and then he might refuse to act with him. I shall go from this to Lexington, to the court which commences this week, and do what I think right; I think your price too high for your land, for me to make much, if any, profit from it; but must conclude to take it at five thousand dollars, for the two tracts of 1000 acres each, payable one-half in one year from the time you send me the deed, and the other half in two years from that time; I mean the 2 tracts entered and surveyed in the name of Thos. Gaskins; it appears to have been patented in the name of Hicks and Campbell; you can have the deed made out, as I suppose you have the patents, and I suppose the claim of title, which it will be necessary to forward, also to be recorded here, if it is not done; I shall expect a general warranty deed, expressing more or less as to the mode of authenticating the deed; our mutual friend Col. Mercer can give you information if you should be at loss, as he has conveyed to me several times. The land lies in the Virginia military district, and in the county of Hopkins. I presume you will have no objection to making the conveyance, and taking my bonds; and indeed this shall oblige me to consider the contract binding on me, as above stated, on receiving the deed as aforesaid for the said land, payable as aforesaid.

If you want any security or a mortgage, say so. As soon as I return home, I will forward the statement in the case of Tennant. The great press of business since my return must be my apology; but it is more against myself than you. You promised me to send me a copy of my account, which we settled when I was in Virginia. Please forward it. You ought to make out a statement of the different persons to whom you have sold your lands in this State, as they remain on the auditor's books till they are transferred. Mr. And. Glassell writes me he has sold one half of his land to Major Joseph Towles, but he does not tell me whether he is a resident of this State; and if so, where, or whether he resides in Virginia. If you know, please inform me.

I am, with great respect, dear sir, your most obt. svt.,

JAMES TAYLOR.

ROBT. PATTON, esq.

NEWPORT, *October 23d*, 1819.

SIR: At the time you forwarded me the deed for the land I bought of you in the county of Hopkins, patented to Thos. Gaskins, you sent me nothing to show how the title had passed to you. The land is listed on the auditor's books for taxes in the name of Thomas Southcombe, and for a number of years I have paid the taxes in his name for you. When your son, Hugh M. Patton, your agent, was here, I inquired of him how you derived your title from Southcombe, and whether he had a regular conveyance from Gaskins. He told me that you had some kind of transfer from Southcombe for all his debts, lands, &c., but did not seem to know much about but promised me, immediately on his getting home, to inform you of my uneasiness and doubts whether the chain of title was perfect, and to notify me, and indeed to request of you to send me a copy of the different conveyances, or, if they were in this county, to inform me where they could be found. I have not had a line from either of you since his return. I also consider myself very badly treated on another score. Your son had drawn a bill for $300, in favor of Talbott, of Lexington, on which he procured Mr. Talbutt to be endorser; and, to indemnify him for doing so, he had lodged with him my bond to you for the 1st payment of the said land. Your son wished to get the bond released, and requested of me to give Mr. Talbott a guarantee that the bill should be duly honored. This I did not hesitate to do. A few weeks ago I received a notification from the F. and M. Bank of Lexington, that the bill, although accepted by you, had been returned to the bank protested for non-payment; and I am called on by Mr. Talbott to take up the bill, and relieve him. I made every exertion in my power, when your son was here, to aid him in discharging a debt due here, which was in the hands of Mr. Talbott for collection, and was largely in advance for your taxes in this State and Ohio. The times, as to a good circulating medium, is truly embarrassing; but, had I been sure the title to the land sold me had been secure, I could have made sales to have met the payments, or nearly so; but I have been deterred from selling one acre, although offered the specie funds for a considerable purchase. Taking the whole transaction together, I must confess it is not such as I expected from Mr. Robert Patton, of Fredericksburg. If there had been any little defect in the title to this land, which can be removed, and I had been notified of it and had it explained, I should not have been disposed to throw difficulties in the way, if there was a prospect to have any difficulty removed. When I go up I shall have the records examined, and, if no chain of title can be found, I shall refuse to pay any more money till these difficulties are removed. I am sure you cannot think I am acting incorrectly in the course I am about to pursue.

I am, sir, your obt. servt.,

JAMES TAYLOR.

ROBT. PATTON, esq.

WASHINGTON CITY, *Feby.* 29, 1820.

ROBERT PATTON, esq.

SIR: I wrote you from Newport, Ky., last fall, requesting information whether the conveyances had been regular from the original patentee, Thos. Gaskins, for the two thousand acres of land sold me by you, laying in Hopkins county, on the waters of Pogue's creek, and which I understood you purchased of Thos. Southcombe, to which letter I am without an answer, and at which I confess I am much surprised. I examined the records at Frankfort, Ky., and it appears to me the conveyances are regular down to Southcombe; and, if you have a proper conveyance from him, (Southcombe,) all will be right, I think. I assure you I wish you and myself to arrange our business in the most amicable manner; but you must be sensible into what difficulties I was thrown by not receiving the wished for information, which was promised me by your son and agent, Hugh M. Patton, esq., and then requested of you in my letter aforesaid, addressed to you specially on the subject, and particularly when I was compelled to take up your said son's bill for $300 and odd dollars, which I had, at the request of your said son guaranteed should be paid by you, which you failed to do, and which I had to pay, to exonerate Tho. F. Talbott, in the F. and M. Bank of Lexington. The true state of this business I did not understand till after I had paid the bill, and I do not think said Talbott treated either yourself or myself with as he afterwards informed me he was authorized to redraw, but which he told me he had no idea of doing, to make himself responsible. Under all these embarrassments, I informed you I could not think of selling the land, until I was assured the legal title was in you before you sold to me. Will you be good enough to give my agent, Philip H. Jones, the necessary information, and, if you have them, the proper conveyance from Thos. Southcombe to you for the said tract of land; and, if not, to send me the document, or an authenticated copy of it, under which you claim the said tract of land.

I am, very respectfully, sir, your obt. servt.,

JAMES TAYLOR.

And afterwards, to wit, at rules held at the clerk's office of the court aforesaid, in the month of November, A. D. 1824, (until which time this cause was regularly continued on the rules,) came the complainant, by his counsel; and, on his motion, it is ruled, that the defendant file his answer to the said amended bill, on or before the first Monday in December next.

And afterwards, to wit, at the November term of the court aforesaid, and on the 13th day of November, 1829, (until which time this cause was regularly continued on the rules,) on motion of the counsel of the complainant, leave is given him to file a bill of revivor herein, to revive this suit against Hugh M. Patton, Robert Patton, John Patton, Wm. F. Patton, Margaretta L. Patton, and Eleanor Ann Chew, the wife of John James Chew, formerly Eleanor Ann Patton, heirs of the said Robert Patton, deceased; which bill of revivor was filed accordingly.

And it appearing to the satisfaction of the court that the said Hugh M. Patton, Robert Patton, John Patton, Wm. F. Patton, Margaretta L. Patton, and Eleanor Ann Chew, the wife of Jno. James Chew, formerly Eleanor Ann Patton, are not inhabitants of this district, and they having failed to answer the complainant's bills, according to law and the rules of this court, it is ordered, that, unless the said defendants appear here on or before the first day of the next term of this court, and answer the compl'ts original bills and bill of revivor, the same will be taken for confessed against them, and the matters thereof decreed accordingly. And it is further ordered, that a copy of this order be inserted in some authorized newspaper, printed in Frankfort, for twelve weeks successively.

The following is the amended bill and bill of revivor, filed in this cause by the foregoing order, to wit:

"To the hon'ble judges of the circuit court of the United States, for the seventh circuit and Ky. district, in chancery sitting:

Your orator, James Taylor, a citizen of the State of Kentucky, with the leave of the court, files the following as an amendment to his original bill heretofore filed in this court against Robert Patton and others. He states that heretofore, to wit, on the day of , he exhibited his bill in chancery in this honorable court against said Patton, &c., for, among other things, an injunction and relief against a judgment at law, which the said Patton had obtained against him on the law side of this court, and for the recision of a contract made between them for the purchase and sale of certain lands therein mentioned. That he afterwards filed an amendment to said original bill. That the said Patton put in his answer to the said original bill. But that, in this state of the cause, and before any decree was made therein, or answer put in to the amended bill, the said Patton departed this life. That your orator is informed, and believes, that the said Patton died utterly insolvent and intestate, and *that* no person has ever administered, or been appointed to administer, upon his estate. He states that Hugh M. Patton, Robert Patton, Jno. Patton, Wm. F. Patton, Margaretta L. Patton, and Eleanor Ann Chew, the wife of Jno. James Chew, formerly Eleanor Ann Patton, are the children and only heirs of the said Robt. Patton, deceased, all of whom are citizens of the State of Virginia. He refers to the bill and answer, and amended bill, and all the orders and proceedings had or made in said cause, and now remaining of record in your honorable court, as the best evidence of the contents thereof, and of the progress and state of said cause, and he prays that the same may be taken and considered as a part of this bill. He charges and states, as he has heretofore done, that the said Patton had no legal, if any, title to said land; that he had made large payments on his contract for the purchase of the same, as will appear by reference to the credits endorsed on one of the bonds on which said judgment was rendered, and which is referred to as a part thereof; and that his only hope and security for obtaining the restitution of said money, so paid by

him, rests upon said land, and whatever imperfect right, if any the said Robert Patton, deceased, had, to said land. The said suit, and the proceedings thereon, having become abated, as to the said defd't, Robert Patton, by his death, your orator is, as he is advised, entitled to have said suit and proceedings revived against the said children and heirs of the said decedent, and the said Jno. James Chew, and to have the same prosecuted and carried into as full effect against them as he could or might have had if the said late defd't, Robt. Patton, had been still living.

To the end, therefore, that they may show cause, if any they or either of them have, why said suit and proceedings therein should not stand and be revived against them, and be in the same plight and condition as the same were at the time of the abatement thereof, and be prosecuted and carried on and into effect against them as they might have been against the said late defd't had he been still living; and to the end that the said suit and proceedings may be and stand revived, and have effect accordingly. And to the further end that, in the event of the said contract being rescinded, and the restoration of the money paid by your orator decreed to him, (all which he prays for,) that the said land, or all the right and title thereto which the said decedent had, and which has descended to his heirs, may be sold for the purpose of raising said money, &c., may it please your honors to grant to your orator the writ of subpœna, &c.

CRITTENDEN, *for Taylor*.

And afterwards, to wit, on the 17th day of May, 1830, the following copy of the foregoing order, and the certificate of its publication, was filed, to wit:

United States of America,
seventh circuit, Ky. district, sct:

JAMES TAYLOR, compl't, against ROBERT PATTON'S heirs, &c., defd'ts. } In ch'y.

On motion of the compl't, by his counsel, and it appearing to the satisfaction of the court, that the defd'ts, Hugh M. Patton, Robt. Patton, Jno. Patton, Wm. F. Patton, Margaretta L. Patton, and Eleanor Ann Chew, the wife of Jno. James Chew, formerly Eleanor Ann Patton; heirs of Robt. Patton, deceased, are not inhabitants of this district, and they having failed to answer the compl'ts bills, according to law and the rules of this court, it is ordered that, unless the said defendants appear here on or before the 1st day of the next term of this court, and answer the compl'ts original bills and bill of revivor, the same will be taken for confessed against them, and the matters thereof decreed accordingly. And it is further ordered that a copy of this order be inserted in some authorized newspaper, printed in Frankfort, for twelve weeks successively.

A copy. Teste, JNO. H. HANNA, *C. C. C. K. D.*

The undersigned, one of the printers of the Argus, certifies that the subjoined order of the 7th circuit court for the district of Kentucky, wherein James Taylor is plaintiff against Robt. Patton's heirs, &c., def'ts, has been published in the aforesaid paper for twelve weeks in regular succession, ending Feb'y 10th, 1830.

Fee for adv., $6 50.

G. E. RUSSELL.

And afterwards, to wit, at the December term of the court aforesaid, and on the 6th day of Dec'r, 1842, (until which time the cause was regularly continued on the rules,) came the compl'ts counsel, and the court being sufficiently advised of and concerning the complt's motion to file an amended bill, do order that the same be overruled.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of October, A. D. 1843, (until which time this cause was regularly continued on the rules, came the def'ts, by their counsel, and set this cause down for hearing at the next November term.

And afterwards, to wit, at the November term of the court aforesaid, and on the 29th day of November, 1843, the following entry was made in this cause, to wit:

It appearing to the court that, since the last term, the defendants, by their solicitors, appeared to the bill of revivor filed against them on the 13th day of November, 1829, and set the cause instituted against their ancestor for hearing before any order for the revivor was had, it is now ordered that, on such appearance, the cause against Robt. Patton be and stand revived against the present defendants, his heirs, and that the cause be remanded to the rules for further proceedings to be had therein.

And, upon a former day of the term, the complainant moved to file an amended bill; and, upon consideration, it is ordered that said motion be overruled.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of July, 1844, (until which time this cause has been continued on the rules,) came the defendants, Hugh M. Patton, &c., heirs of R. Patton, deceased, by B. Monroe, esq., their counsel, and filed their answer to the complainant's bill herein; which answer above mentioned is as follows, to wit:

The joint and several answer of Hugh M. Patton, in his own right, and as administrator of Robt. Patton, jr., decea'd, Jno. M. Patton, Wm. F. Patton, Jno. M. Herndon, and Margaretta L. Herndon, formerly Margaretta L. Patton, Jno. James Chew, and Eleanor Ann Chew, his wife, formerly Eleanor Ann Patton, to a bill of complaint exhibited against Robert Patton, sen'r, dec'd, during his life, together with the amended bills thereto, and to a bill of revivor against them as heirs at law of said Robert Patton, dec'd, by James Taylor, in the 7th circuit court of the United States for the district of Kentucky.

These respondents, saving and reserving to themselves the benefit of

all and every exception or exceptions to said bills, for answer thereto, or to so much thereof as they are advised that it is material that they should answer unto, answering, say, that they know nothing of the facts stated in the complainant's bill; and the defendant answers, in regard to the contract mentioned therein as having been made between the compl't, James Taylor, and the def't, Robert Patton, sen'r, dec'd, that is to say, as of their own knowledge, though they believe the fact stated in defendant's answer to be true, except the said Hugh M. Patton, who saith that, like the other respondents, he believes the facts stated in defendant's answer to be true; but that he has also some personal knowledge of the facts therein stated, which knowledge in regard thereto commenced in the year 1819 or 1820, when he became the agent of said defendant, who was his father, and, as such, visited Lexington, Ky., for the purpose of paying off a decree which had been obtained by one Bledsoe's heirs against said def't, and which had been assigned to Theodore Tolbott, attorney at law, by one William West, in satisfaction of a claim due by West to *Witherspoon & Muirhead*, then of Philadelphia. While this respondent was in Lexington he rec'd from the compl't, on one of the two bonds which the complainant had given to the defendant for the purchase of 2,000 acres of land mentioned in the complainant's bill, the sum of $600. This respondent then drew a draft upon said complainant in favor of Theodore Talbott, the proceeds of which were to be applied to the decree mentioned when collected; which draft the compl't would not accept. This respondent, after this, assigned and transferred the bonds mentioned to said Theodore Talbott, the proceeds of which, when collected, should be applied to said decree; and this respondent never heard, until after he had transferred said bonds, of any objection ever being made by said compl't to the title to said land, for the purchase money of which said bonds had been given; and for further answer, all and each of these defendants say, that they know not whether the contract mentioned in the bill of the compl't and the answer of the def't, in regard to said land, was by letter or otherwise; that they know nothing of the original letters from which the copies exhibited by the complainant purport to have been taken, and cannot therefore say whether they be true copies or not, nor can they exhibit the original, as by the compl't required to do. Nor have these respondents any testimony, written or other, to show in what manner the said def't derived his title to said land from Thos. Southcombe, other than as defendant states in his answer. And these respondents having fully answered, pray that they may be hence dismissed with their costs, wrongfully sustained, &c.

HUGH M. PATTON,
JNO. M. PATTON,
MARGARETTA L. HERNDON,
JNO. M. HERNDON,
JNO. JAMES CHEW,
ELEANOR A. CHEW,
WM. F. PATTON.

State of Virginia, corporation of Fredericksburg, to wit:

This day personally appeared before me, a justice of the peace in and for the corporation aforesaid, Hugh M. Patton, Jno. M. Herndon, Margaret J. Herndon, his wife, Jno. J. Chew, and Eleanor Ann Chew, his wife, of lawful age, and made oath that the facts contained in the foregoing answer, as of their own knowledge, are true, and those stated as of the knowledge and information of others they believe to be true.

Given under my hand and seal this 18th day of May, 1844.

WILLIAM H. WHITE, *J. P.*

Corporation of Fredericksburg, to wit:

This day personally appeared before me, a justice of the peace in and for the corporation aforesaid, Jno. M. Patton, of lawful age, and made oath that the facts contained in the foregoing answer, as of his own knowledge, are true, and those of the knowledge and information of others he believes to be true.

Given under my hand and seal, 18th May, 1844.

WILLIAM H. WHITE, *J. P.*

State of Virginia, corporation of Fredericksburg, to wit:

I, John Chew, clerk of the court of hustings of said corporation, do hereby certify that William H. White, esq., whose signature is affixed to the foregoing certificates, was at the time of signing the same, and administering the oath therein contained, a justice of the peace of the said corporation, duly commissioned and sworn, and that full faith and credit are due to all his acts and deeds as such.

In testimony whereof I have hereunto set my hand and affixed the [L. s.] seal of the said court, this 18th day of May, A. D. 1844.

JNO. JAMES CHEW.

State of Virginia, corporation of Fredericksburg, to wit:

I, Robert B. Semple, presiding magistrate of the hustings court of said corporation, do hereby certify that Jno. James Chew, whose hand and seal of office is affixed to the above certificate, is clerk of the hustings court of said corporation, and that due faith and credit ought to be paid to all his acts and deeds as such. Certified under my hand and seal, this 20th day of May, 1844.

R. B. SEMPLE, *J. P.* [SEAL.]

State of Virginia, Norfolk county, to wit:

This day personally appeared before me, a justice of the peace in and for the county of Norfolk aforesaid, Wm. F. Patton, of lawful age, and made oath that the facts contained in the foregoing answers, as of his own knowledge are true, and those as of the knowledge and information of others, he believes to be true. Given under my hand this 23d day of May, 1844.

JOHN NASH, *J. P.*

State of Virginia, Norfolk county, to wit:

I, Arthur Emmerson, clerk of the county court of Norfolk county, in the State of Virginia aforesaid, hereby certify that John Nash, who has given the preceding certificate, is a justice of the peace in and for Norfolk county aforesaid, duly commissioned and qualified to act as such, according to the constitution and laws of this State.

In testimony whereof, I have hereunto set my hand, and affixed the [L. S.] seal of the said court, this 23d day of May, 1844, and of our independence the sixty-eighth.

ARTHUR EMMERSON, *C. C.*

Virginia, Norfolk county, to wit:

I, Richard Baugh, magistrate of the county court of Norfolk county, in the State of Virginia, hereby certify that Arthur Emmerson, who has given the preceding certificate, is the clerk of the said court, and that his attestation is in due form.

Given under my hand, this 23d day of May, 1844.

RICHARD BAUGH, *J. P.*

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of August, A. D. 1844, came the defendants, by their counsel, and, on their motion, it is ruled that the complainant file his replication to said defendant's answer; and thereupon came also the said complainant, by his counsel, and for replication to the answer of said defendants says, that the matters and things set forth and alleged in said answer are not true, and therefore, he says, that the matters therein alleged ought not to preclude them from the relief sought in his original or amended bill; wherefore they pray for the relief sought, and as in duty, &c.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of November, 1844, came the defendants, by their counsel, and set this cause down for hearing at the next November term.

And afterwards, to wit, at the November term of the court aforesaid, and on the 29 day of November, 1844, the following entry was made, to wit: The complainant filed his bill of revivor, and the defendant, Hugh M. Patton, administrator of Robert Patton, deceased, appeared by his counsel; and agreement of the complainant, by his counsel, and the counsel of the said administrator, Hugh M. Patton, the answer of said *Hugh M. Patton*, already filed, is read and taken as the answer of the said Hugh M. Patton to the original and amended bills and bill of revivor, and this suit is revived against said administrator; and it is agreed that the depositions now on file are to be read on the hearing, and the parties are to have leave to take depositions until the first day of February next, and afterwards, by order of the judge, till first of May next.

Amended bill.

The following is the amended bill filed by complainant on the 29 day of November, 1844, to wit:

The complainant by way of amendment to his original bill herein filed, states that he is informed and charges the fact, that Hugh M. Patton is one of the heirs and likewise the administrator and legal representative of Robert Patton, deceased; that he, therefore, prays and Hugh M. Patton, as such administrator, be made party to the original and various amended bills herein heretofore filed, and that he answer the same; and he prays such relief against him, and Hugh M. Patton, as administrator, as prayed in his original and amended bills herein, &c.

CAMPBELL,
Attorney for complainant.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of February, 1845, the following entry was ordered to be made by the honorable Thomas R. Monroe, one of the judges of said court, who was present with the counsel of the parties, to wit:

On motion of the complainant, the term for taking the proofs is enlarged and extended for both parties to the last Monday in April next: but publication may be afterwards passed, and either party set the cause for hearing on the first day of the next term, without notice on the rules.

And afterwards, to wit, at the May term of the court aforesaid, and on the 8th day of May, 1845, came the parties, by their counsel; and thereupon this cause came on to be heard upon the bill, answer, depositions, &c., and was heard in part. And at a subsequent day of the same term of the court aforesaid, to wit, on the 9 day of May, 1845, came again the parties aforesaid, by their counsel, and thereupon this cause was further heard; but there not being time to complete the hearing, the same is laid over until to-morrow morning.

And on a subsequent day of the same term, to wit, on the 10th day of May, 1845, came again the parties, by their counsel, and the argument of this cause was further heard; but there not being time to complete the argument, the same is laid over until Monday morning 9 o'clock.

And at a subsequent day of the term last aforesaid, to wit, on the 12th day of May, 1845, came again the parties, by their counsel, and the hearing of the cause was proceeded with accordingly.

On the opening of the cause, the complainant moved the court to reject and suppress the deposition of Theodore F. Talbott, taken and filed on the part of the defendants, and when it was offered on their part for proof, objects to its being read, on the ground that the witness was, when he deposed, interested in the event of the suit against him, the complainant, and with the defendants; and, for proof of his ground of objection, relied on the matter stated by the witness himself, in his deposition, and read the bond of the witness, as the surety of the defendants' intestate and ancestor, for costs, in his action at law against the complainant, wherein the judgment herein enjoined was recovered by default; and also read the assignment to the witness of one of the promissory notes of the complainant, the one payable on the 30th January, 1820, on which the judgment enjoined was rendered in these words:

"For value received, I assign the within note to Theodore F. Talbott.
ROBERT PATTON,
By HUGH M. PATTON,
July 1*st*, 1819. *his attorney in fact*."

But the decision of the matter not having been insisted on, it was reserved for discussion, with the merits of the cause. Whereupon, the complainant read the deposition of Mathew T. Scott, Patterson Bayne, and James E. Davis, for proof that the witness was not credible, in case of the decision of the court that he is competent to testify. Whereupon the cause progressed, and this matter having been therein fully discussed, and the court now sufficiently advised thereof, it seems to the court that the deposition of Talbott, on the grounds of objections by the complainant, and because the matters stated as facts by the witness, neither of themselves, nor in connection with the other proofs, and in any way material in the cause, ought to be rejected and disregarded. But in order that, on any revision of the decree which shall be rendered, the defendants may have the benefit of the matters stated in the deposition, if worth to them any thing, and the witness is competent, whilst the complainant has the benefit of his objections to the competency of the witness, or of his proofs to establish that he is not credible, the depositions are all allowed, and read, subject to the above objections, and so retained in the record to be respectively good for what they are worth, or held for naught, according to the law of the case.

When the cause had been opened, and the counsel of the complainant had read his bill, and the amended bill filed on the 24th of May, 1823, he offered to read three papers, purporting to be copies of letters addressed by complainant to Robert Patton, the original defendant, one under date 30th January, 1818, one under date 23d October, 1819, and the other from Washington city on the 29th February, 1820. The defendant objected to reading these papers, because there was no proof that such original letters had been received by Patton, or had been transmitted or written; whereupon it was the opinion of the court, that there being no evidence that letters, whereof these papers are copies, had been written, transmitted, or received, these papers were not of themselves evidence that there ever were original letters written and transmitted, of which they are copies, and therefore could not be read as copies of such letters; but that the allegations by complainant in his amended bill, that he had addressed letters to Robert Patton of those dates, whereof he annexed copies, was, with the fact that these papers were annexed or filed with the amended bill, of the same effect as an allegation that he had on these several days addressed letters to Robert Patton, in these words, setting out the letters, in words and figures, at full length; and that, therefore, these papers, purporting to be copies of letters, ought to be read, as constituting part of the allegations of the amended bill, but in no otherwise; and the papers were so read.

And the hearing of the cause having been proceeded with, was fully heard; and afterwards, to wit, at a subsequent day of the term aforesaid,

to wit, on the 13th day of May, 1845, came again the parties by their counsel, and this cause having been heard at this term, was argued by counsel; and thereupon, on consideration thereof, it is ordered, adjudged, and decreed, that the contract between the complainant, James Taylor and Robert Patton, intestate, and ancestor of the defendants, of the purchase by complainant from Robert Patton, and the sale by him, Patton, to complainant, of the two tracts of land, each of one thousand acres, situated in the county of Hopkins, State of Kentucky, surveyed originally for Thomas Gaskins, at the price of $5,000, entered in the year 1818, in the bill alleged, and answers admitted, be, and the same is hereby rescinded and annulled. And it is ordered and decreed, that the defendant, Hugh M. Patton, administrator of the chattels, rights, and credits of Robt. Patton, and all others, be, and they are hereby forever enjoined from all proceeding on the judgment which was recovered by the consideration of this court, on the common law side thereof, at its November term, 1820, by the decedent, Robert Patton, against the complainant, in an action on the two promissory notes which had been executed by the complainant to Robt. Patton, as the price of said two tracts of land, and in consideration of his expected conveyance thereof to him for the sum of $5,000, with interest on $2,500 thereof from the 30th day of January, 1819, and on the remainder thereof from the 30th of January, 1820, together with the costs of the plaintiff in the action expended; and that the deed of bargain and sale of Robt. Patton to the complainant, purporting to convey to him the aforementioned two tracts of land, for and in consideration of the $5,000, bearing date September 3d, 1818, and registered in the clerk's office of the Hopkins county court of Kentucky, which was delivered by Patton, as the supposed execution, on his part of his contract of sale, and received by complainant as a supposed conveyance of the land to him, be, and the same is hereby, cancelled and annulled, and shall be henceforth held for naught. It is found by the court that the complainant, after the commencement of this suit, took the possession of the land by colour of title, under the deed of bargain and sale above cancelled and annulled, and hath received some amount of rents and profits thereof above his expenditures for improvements.

But it appears the complainant had, in the lifetime of Robert Patton, his grantor in that deed, under which he so entered and claimed, paid to him, in part consideration of his contract for the purchase of the land, the sum of six hundred dollars on the 1st day of July, 1819, the sum of $450 on January 30, 1819, and the sum of $373 $\frac{82}{100}$ on 19th November, 1819, amounting, in the whole, to the sum of $1,423 83. It is therefore adjudged and ordered, that the complainant, on receiving from the defendants, or the cestui que trust, the balance which shall be found in his favor, after deducting the amount of the rents and profits he shall have received of the land above his expenditures for necessary improvements and repairs thereof, from the amount of the above sums he had paid in part of the price of the land, with interest on each of them from the day it was paid by complainant, and the costs ex-

pended by him in the prosecution of this suit, do deliver up the possession of all the land he had entered upon or has in his possession, either by himself or his tenants, under color of the deed above cancelled, to the defendants Hugh M. Patton, John M. Patton, Wm. F. Patton, Margaret L. Herndon, formerly Patton, wife of Jno. M. Herndon, and Eleanor Ann Chew, formerly Patton, wife of Jno. James Chew, heirs-at-law of Robt. Patton, deceased, and thereupon executed to them a deed of bargain and sale for the two entire tracts of land embraced by their ancestor's deed to him, the complainant, with covenant of warranty against all persons claiming by, through, or under him, but in trust for Witherspoon and Muirhead, who, it appears by the answer of Robt. Patton, taken in connection with the proofs taken and filed herein by him in his lifetime, and, as it is affirmed by the present defendants in their answer, were entitled to the benefit of the judgment at law in his name against complainant above enjoined for the purpose of satisfying, first, the sum which shall have been paid to complainant, as above prescribed, and then for the payment to them, Witherspoon & Muirhead, of the amount which they would have been entitled to of the complainant on the judgment against him, had the injunction against the enforcement thereof been dissolved, instead of being made perpetual.

The master commissioner is directed to take an account of the rents and profits accrued and *and* which shall have accrued of all the two tracts of land which the complainant had entered upon, had, or has in possession by himself or tenants, by colour of title under Robert Patton to him, of Sept. 3d, 1818, above cancelled and annulled, and of the costs and present value of any lasting and valuable improvements made by complainant thereon, and of his repairs of such improvements. He shall show the several messuages, and the amount of the improved land of each of them, and *and* the number of years of the complainants' possession thereof, and state the improvements and repairs for which complainant may ask credits or compensation. He may show what was the fair value of the use and occupancy of each messuage each year, what was the sum the complainant was entitled to therefor by his contracts, express or implied, with the tenant, and again what sums he actually received for rents. He will act on his own view of what he finds on the land, and on the testimony of witnesses and competent documents produced him; this testimony he will state himself and report. He shall proceed, on the application of either party, on his shewing that reasonable notice had been given the other or his solicitor, in order that if, when the sum to which the complainant is or shall be entitled, shall have been ascertained, the same is not paid him, the court may order a sale of so much of the land (with such title as has been acquired by the decision by complainant, and his possession so held, and which complainant may have in any other wise acquired, or is held by the defendants in this suit) as may be necessary to raise the amount, and cause the complainant to execute his deed of conveyance therefor to the purchaser, and then to execute his deed for the residue to the heirs of Robt.

Patton, as above prescribed; and that such other order may be made as shall be proper to carry into effect the general principle hereof; the cause is reserved, and for this purpose the parties are retained in court, and Orlean Bishop, of the county of Hopkins, is appointed the commissioner.

Whereupon the defendants, by their counsel, prayed *and* appeal to the honorable the Supreme Court of the United States, which is granted them upon their executing bond, with Philip Swigert as security, in the penalty of $500, within twenty days, and conditioned according to law.

And afterwards, to wit, on the 20 day of May, 1845, the defendants executed, in pursuance of the preceding order, the following appeal bond, to wit:

Know all men by these presents, that we, Hugh M. Patton, administrator, and Hugh M. Patton. Jno. M. Patton, Wm. F. Patton, Margaretta L. Herndon, formerly Patton, wife of John M. Herndon, John M. Herndon, John James Chew, and Eleanor Ann Chew, his wife, formerly Eleanor Ann Patton, heirs of Robert Patton, deceased, and Philip Swigert, security, are held and firmly bound unto James Taylor in the just and full sum of $500; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, jointly and severally, firmly by these presents. Sealed with our seals and dated this 20 day of May, 1845.

The condition of the above obligation is such, that whereas the above bound administrator and heirs have prayed for and obtained an appeal from a decree of the 8th circuit court of the United States of America, in and for the Kentucky district, pronounced at the May term, 1845, wherein Jas. Taylor was complainant, and the said administrator and heirs are defendants, to the Supreme Court of the United States. Now, if the said administrator and heirs shall well and truly prosecute the said appeal with effect, or, on failure thereof, pay to the said James Taylor all costs and damages that he may incur in the defence thereof, which may be legally awarded them, the above obligation to be void, otherwise to remain in full force and virtue.

_____ _____, [SEAL.]
PHILIP SWIGERT. [SEAL.]

The following are the exhibits filed herein by the complainant, to wit:

THEODORE F. TOLBATT, esq.:

SIR: This is to notify you, that H. M. Patton's bill of exchange for $333, (of the protest for non-payment of which you have been notified,) has been returned to this bank, (which is the holder,) where it is expected you will call and pay the same.

Respectfully yours,
M. T. SCOTT, *Cashier*.
By WM. C. BELL, *2d Clerk*.

Farmer and Merchants' Bank of Lex., Sept. 9, 1819.

Robert Patton and wife to James Taylor.—Deed.

This indenture, made this 3d day of September, A. D. 1818, between Robert Patton, and Ann G. his wife, of the town of Fredericksburg, and State of Virginia, of the one part, and James Taylor, of the town of Newport, and State of Ky., of the other part, witnesseth: That the said Robert Patton, and Ann Gordon, his wife, for and in consideration of the sum of $5,000, current money of Virginia, to them in hand paid, the receipt whereof is hereby acknowledged, hath given, granted, aliened, enfeoffed, bargained, and sold, and by these presents doth give, grant, alien, enfeoff, bargain and sell, unto the said James Taylor, to him and to his heirs and assigns forever, two several tracts or parcels of land, lying and being in the commonwealth of Kentucky, that is to say: 1,000 acres of land, surveyed for Thomas Gaskins, part of a military warrant, No. 765, on the waters of Trade Water river; beginning at two dogwoods and a cherry tree, N. west corner to Robert Hanney's 1,000 acres survey, No. 280, running west 400 poles, through a rich plumb orchard, to a white oak, black oak, and hickory; thence, south 400 poles, to a black oak and two small cherry trees, northwest corner to Wm. Parson's 1,000 acres, survey No. 347; thence, with his line, east 400 poles, crossing a branch, to a black oak, white oak, and dogwood, southwest corner to said Harvey; thence, with his line, north 400 poles, to the beginning. Also, one other tract of land, 1,000 acres, surveyed in the name of Thos. Gaskins, lying and being on the waters of Trade Water river; beginning at a white oak, black oak, and hickory, N. west corner to his former survey, 1,000 acres, No. 55, running west 400 poles, to 2 white oaks and a mulberry tree; thence, south 400 poles, crossing a branch and crab orchard, to a mulberry, hickory, and black oak; thence, east 400 poles, to a black oak and two small cherry trees, S. west corner to his said 1,000 acre survey; thence, with the lines of the same, north 400 poles, to the beginning. To have and to hold the said several tracts or parcels of land hereunto before mentioned, unto him, the said James Taylor, his heirs, executors, administrators, and assigns, forever. And the said Robert Patton, and Ann Gordon, his wife, for themselves, their heirs, executors, and administrators, and every of them, doth covenant, promise, and grant, to and with the said James Taylor, his heirs and assigns, in manner and form following, that is to say: that they, the said Robert Patton, and Ann Gordon, his wife, their heirs, executors, or administrators, shall and will, at the reasonable request of the said James Taylor, his heirs or assigns, or any or either of them, make, do, perform, and execute, all and every such deed or deeds, conveyance or conveyances, and all and every other act or acts which the said James Taylor, his heirs or assigns, or his or their counsel learned in the law, shall reasonably desire, advise, and require, for further assuring, sure-making, and confirming, all and singular the said (2) several tracts or parcels of land, and all and singular other the premises herein above conveyed, and meant to be conveyed, to him, the said James Taylor, his heirs and assigns, forever; and also, that he, the said Robert Patton,

and Ann Gordon, his wife, their heirs, executors, and administrators, and every of them, the said 2 several tracts or parcels of land, all and singular other the premises therein above conveyed, against them, the said Robert Patton, and Ann Gordon, his wife, all and every other person or persons howsoever claiming, to him, the said James Taylor, his heirs and assigns, forever, shall and will warrant and forever defend, by these presents.

In witness whereof, the said Robert Patton, and Ann Gordon, his wife, have set their hands and affixed their seals, the day and date first above written.

ROBERT PATTON, [SEAL.]
ANN G. PATTON. [SEAL.]

Signed, sealed, and delivered.

Virginia, Spottsylvania county, to wit:

This day, Robert Patton, of the county aforesaid, in the *said* State *aforesaid*, appeared before us, Hugh Mercer and John Crump, justices of the peace for the said county, and acknowledged the writing which is hereto annexed to be his proper act and deed; and we, having examined Ann Gordon Patton, wife of the said Robert Patton, separate and apart from her husband, she did in our presence acknowledge, that she has executed the said deed freely and voluntarily, without his persuasions or threats, and that she is willing the same shall be recorded in the proper court, in the State of Ky.

Given under our hands and seals, this 9th day of September, 1818.

HUGH MERCER, [SEAL.]
JOHN CRUMP. [SEAL.]

State of Virginia, Spottsylvania county, to wit:

I, Robert S. Chew, clerk of the county court of Spottsylvania, in the State aforesaid, do hereby certify, that Hugh Mercer and Jno. Crump, whose certificate is hereto annexed, are acting justices of the peace in and for the said county of Spottsylvania, duly commissioned and qualified to the said office, and that full faith and credit is due to all their official acts, as such, in every court or office in the United States.

In testimony whereof, I have hereunto set my hand, and affixed the [L. S.] seal of my office, this 15th day of September, 1818, and the 43d year of the commonwealth.

ROBT. S. CHEW, *C. S. C. C.*

State of Virginia, Spottsylvania county, to wit:

I, Edward Herndon, presiding justice of the court of Spottsylvania county, in the State aforesaid, do hereby certify, that the attestation hereto annexed, made by Robert S. Chew, clerk of the said court, is in due form, and by the proper officer appointed by the laws of said State for that purpose, and that full faith and credit is due thereto in every court or office in the United States.

Given under my hand, at the county of Spottsylvania, in the State of Virginia aforesaid, this day of September, 1818, and of the independence of the United States the 43d.

EDWARD HERNDON, *J. P.*

22d *Nov.*, 1819.

State of Kentucky, Hopkins county, sct:

This indenture was this day presented to me, in my office, and with the certificates of Hugh Mercer and John Crump, Robert S. Chew and Edward Herndon, esqs., thereon authenticating the same, admitted to record.

Attest: SAM'L WOODSON, *Clk.*

Extract from direct tax book.

List of the tracts of land, or other real property, sold by John H. Mortin, collector of the direct tax for the second collection district, in the State of Kentucky, and designated by the Secretary of the Treasury to receive the taxes from non-resident proprietors of property, for the non-payment of said taxes, which property may be redeemed, under the provisions of the 30 section of the acts of Congress passed the 9th day of January, 1815.

Thomas Gaskins, amount of tax $18 72, 900 acres sold, part of 2,000 acres, on Trade Water, in the county of Hopkins. Thomas Gaskins, presumed owner, sold, on the 22d day of May, 1817, and purchased by D. Campbell, for the amount of tax due thereon for the year 1815. Tract of land sold by the same person, for direct tax of the year 1816, Thomas Gaskins, land of tax $4 68, 100 acres sold, part of 2,000 acres, on Trade Water, in Hopkins county, Tho. Gaskins, presumed owner. Sold on the 19th day of November, 1818, and purchased by Phil. H. Jones, for the amount of tax due thereon for the year 1816.

UNITED STATES OF AMERICA:

I, Jno. H. Hanna, clerk of the district court of United States, in and for the district of Kentucky, do hereby certify, that the above are true extracts from the direct tax books, now in the clerk's office of said court, and that the two tracts of land therein mentioned have not been redeemed.

In testimony whereof, I hereto subscribe my name, this 25th day of January, 1845, and in the 69th year of our independence.

JNO. H. HANNA, *Ck. D. C.*

Transcript of suit of R. Patton against James Taylor.

UNITED STATES OF AMERICA,

Eigth circuit and district of Kentucky, sct:

Pleas before the honorable Thomas Todd and Robert Trimble, judges of the circuit court of the United States of America, held in and for the circuit and district aforesaid, at the capitol, in the town of Frankfort, at the November term thereof, A. D. 1820.

Be it remembered, that heretofore, to wit, on the 7th day of July, 1820, came Robert Patton, by his attorney, into the clerk's office of the court aforesaid, and ordered a capias, which was issued in the words and figures following, to wit:

[L. S.] The United States of America, to the marshal of the district of Kentucky, greeting:

You are hereby commanded to take James Taylor, a citizen of the State of Kentucky, if he be found within your bailiwick, and him safely keep, so that you have his body before the judges of 7th circuit court of the United States of America, in and for the district of K'y, at the capitol, in Frankfort, on the first Monday in November next, to answer Robt. Patton, a citizen of the State of Virginia, of a plea of debt for five thousand dollars—damage $500; and have then there this writ.

In testimony whereof, John Marshall, esq., chief justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 7th day of July, A. D. 1820, and in the 44th year of the independence of the United States.

Att: JNO. H. HANNA,
C. C. C., K. D.

On which there was the following endorsement, to wit: This is an action of debt, and no bail is required.

T. F. TALBOTT, *P. Q.*

On which there was the following evidence of service, viz: I acknowledge service of the within process.

JAS. TAYLOR.

And afterwards, to wit, on the 22d day of July, 1820, came the said Robert Patton, by his attorney, into the clerk's office of the court aforesaid, and filed his declaration herein, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Circuit court, 7th circuit, Kentucky district:

Robert Patton, a citizen of the State of Virginia, complains of James Taylor, a citizen of the State of Kentucky, of a plea, that he render unto the said Robert $5,000, which to the said Robert he owes, and from him unjustly detains; for that the said James, on the first day of July, 1819, in the district aforesaid, made and sealed his certain bill obligatory, in writing, to the court and the said James Taylor now here shewn, the date whereof is the day and year aforesaid; and thereby the said James, by the description and name of James Taylor, of the county of Campbell, and State of Kentucky, did oblige himself, his heirs and administrators, to pay to the said Robert, by the name and description of Robt. Patton, his heirs or assigns, of the town of Fredericksburg, and State of Virginia, the sum of $2,500, in *in* current money, on the 13th day of January, 1820, as witness his hand and seal, the day first aforesaid, and delivered the said bill to the said Robert; and

the said Robert in fact saith, that the said James did not pay the said sum of money according to the tenor of said obligation, nor hath he yet paid the same; wherefore, an action has accrued to the said Robert to demand of the said James the said sum of $2,500, parcel of the debt above demanded.

And whereas, also, the said James, on the fifth day of August, 1818, in the district aforesaid, by his certain other writing obligatory, sealed with his seal, and now here shewn to the court, the date whereof is the day and year last aforesaid, did, by the name and description of James Taylor, of the county of Campbell, and State of Kentucky, oblige himself, his heirs and administrators, to pay to the said Robert, by the name and description of Robert Patton, of the town of Fredericksburg, Virginia, the sum of $2,500, in current money, on the 30th day of January, 1819, as witness his hand and seal, the said fifth day of August, 1819. And the said Robert in fact saith, that the said James did not pay the said $2,500 on the day and year when the same, according to the said last mentioned bill, was payable, to wit, 30th day of January, 1819, nor at any time since, but therein wholly failed; wherefore, an action hath accrued to the said Robert to demand of the said James the said last mentioned sum of money, residue of the debt above demanded. Yet the said James, although often requested, hath not paid the said sum of $5,000 to the said Robert, but hath wholly failed and refused to do so, to the said Robert, his damage, $500; and therefore he brings his suit, &c.

THEODORE F. TALBOTT,
Attorney for Plaintiff.

The following are copies of the bills declared on, to wit:

Bond of Jas. Taylor, $2,500.

I, James Taylor, of the county of Campbell, and State of Kentucky, do oblige myself, my heirs and administrators, to pay to Robt. Patton, of the town of Fredericksburg, and State of Virginia, the sum of $2,500, in current money, on the 30th day of Jan'y, 1819, as witness my hand and seal, this 5th day of August, 1818.

JAMES TAYLOR.

Witness: PHILIP H. JONES.

On which there was the following receipts, to wit:

Receipt for $600.

July 1st, 1817, rec'd from James Taylor the sum of six hundred dollars of the within.

HUGH M. PATTON.

By direction of Hugh M. Patton, agent of Robert Patton, the within note is credited with $450, as due Jan'y 30, 1819; and I this day rec'd from James Taylor three hundred and seventy-three and eighty-two hundredths dollars, November 19, 1819.

$373 $\frac{82}{100}$.

T. F. TALBOTT,
Attorney for Robt. Patton.

Bond of James Taylor for $2,500.

I, James Taylor, of the county of Campbell, and State of Kentucky, do oblige myself, my heirs and administrators, to pay Robt. Patton, his heirs or assigns, of the town of Fredericksburg, and State of Virginia, the sum of $2,500, in current money, on the 30th Jan'y, 1820, as witness my hand and seal, this first day of July, 1818.

JAMES TAYLOR. [SEAL.]

On which there was the following assignment, to wit:

Assignment.

For value rec'd, I assign the within bond to Theo. F. Talbott.

ROBT. PATTON,
By H. M. Patton, his att'y in fact.

July 1*st*, 1819.

Judgment at law.

And afterwards, to wit, at the November term of the court aforesaid, and year 1820, came the plaintiff aforesaid, by his attorney; and the defendant, having been duly arrested, was solemnly called, but came not. Therefore, it is considered by the court that the plaintiff recover against the said defendant $5,000, the debt in the declaration mentioned, with six per centum per annum interest on $2,500, part thereof, from the 30 day of January, 1819, until paid; and also the like interest upon $2,500, the balance thereof, from the 30th January, 1820, until paid; and also his costs by him about this suit expended in this behalf.

On motion of the plaintiff, by his attorney, it is ordered, that this judgment have credit on the first note for $600, paid 1st July, 1819; also $450, paid 30 January, 1819; also $373 $\frac{82}{100}$, paid 19th November, 1819, as endorsed on note.

United States of America:

I, John H. Hanna, clerk of the circuit court of the United States for the district of Kentucky, do certify, that the preceding five pages contain a true transcript of the record and proceedings in the suit mentioned in the caption thereof.

Witness my hand this 17th May, 1845, and in the 69 year of our independence.

JNO. H. HANNA, *C. C. C. K. D.*

Bond for costs.

The following is the bond of Theodore F. Talbott for the costs of the suit at law, read on the hearing of this cause:

"Know all men by these presents, that we, Robt. Patton and Theodore F. Tabbott, are held and firmly bound unto James Taylor, and the clerk and marshal of the 7th circuit court of the United States of America in and for the Ky. district, and the surveyor or surveyors that

may be appointed by said court, magistrates, and witnesses, severally, in the sum of $1,000, to be paid to the said James Taylor, his certain attorney, his heirs, executors, administrators, or assigns, and to the clerk and marshal, or their successors, and the surveyors, witnesses, and magistrates, severally; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 7 day of July, 1820. Whereas the said Robt. Patton, citizen of the State of Virginia, hath instituted a suit in the said court against the said James Taylor, and hath offered the said Theodore F. Tabbott, of the county of Fayette, in the Commonwealth of Virginia, to be bound with him in this bond for all the costs in this suit, of every kind and description, that may be incurred.

Now, the condition of the above obligation is such, that, if the above bound Robert Patton and Theodore F. Talbutt, or either of them, shall well and truly pay to the said James, his heirs, executors, &c., and to the said clerk and marshal, or their successors, and the surveyor or surveyors that may be appointed by the court, witnesses, and magistrates, severally, and all costs, of every kind whatever that may be incurred in the said suit, or with which he may become legally chargeable, then the above obligation to be void, or else to remain in full force and virtue.

Witnesss: THEODORE F. TOLBOTT. [SEAL.] [SEAL.]

The following are the depositions filed in this cause by the complainant, to wit:

Deposition of Samuel Winston.

The deposition of Sam'l Winston, taken before me, Horatio T. Harris, one of the judges of the county court of Campbell county, in the Commonwealth of Kentucky, on the 8 day of November, 1844, at the office of James Taylor, ju'r, in the town of Newport, in pursuance of the notice hereunto attached, to be read as evidence in a certain suit in chancery, depending in the circuit court of the United States for the 8 circuit and Ky. district, holden in Frankfort, wherein James Taylor is complainant, and Hugh M. Patton, and others, heirs of Robt. Patton, deceased, are defendants.

The said deponent, being first carefully examined, and cautioned, and sworn to tell the whole truth, doth depose and say:

In the year 1815, I visited Hopkins county, Ky., for the purpose of examining two tracts of land, of 1,000 acres each, surveyed and patented to Thomas Gaskins, on the waters of Trade Water and Pogue's creek, in Hopkins county, Ky. I was requested to visit said lands by Gen. James Taylor, who acted as agent for Robert Patton, of Fredericksburg, Virginia, who was agent for Thomas Southcombe. I was directed to take possession of said lands, and to lease out the same; and I gave the annexed lease, marked (A,) to Thomas Adams, on the

fourth day of December, 1815. Said lease and agreement is wholly in my handwriting, and signed by me, as the agent of Thos. Southcombe; and the same was also signed by said Thomas Adams in my presence. The said two tracts of land, which I took possession of in the name of Gaskins, are the same which, in the year 1818, James Taylor, the complainant in the above cause, purchased of said Robert Patton. And further this deponent saith not.

SAM'L WINSTON.

Kentucky, Campbell county, sc:

I, Horatio T. Harris, one of the justices of the peace for the Commonwealth of Kentucky, in and for the county of Campbell, duly commissioned, sworn, and acting as such, and by law, and by virtue of my commission as one of the judges of the county court of said county, and acting as such, do certify that, at the request of the said complainant, I caused the above named Sam'l Winston, deponent in the foregoing deposition, to come before me, at the time and place in the caption and notice stated, a copy of which notification, with the affidavit of the services thereof, is hereunto attached; that the said witness was by me carefully examined, cautioned, and sworn then and there to testify the whole truth; that the said deposition was wholly reduced to writing by me, in the presence of the said witness; and that he then and there, in my presence, subscribed the same; that I am not counsel or attorney for either of the parties, or interested in the event of the suit. All of which is certified to the said court as the cause wherefore this deposition is taken, and for the manner it is done.

Given under my hand this 8th day of November, 1844.

H. T. HARRIS, *J. P. C. C.*

Justice's fee, paid by complainant, $1 00.

The following is the lease mentioned in and attached to the foregoing deposition, to wit:

Article of agreement made and entered into this 4th day of December, 1815, between Sam'l Winston, agent for Thos. Southcombe, of Campbell county, Ky., of the one part, and Thomas Adams, of Hopkins county, and State of Ky., of the other part, witnesseth:

That said Winston, agent as aforesaid, has this day leased all the improvement now made on the said Thos. Southcombe's 2,000 acres of land, for the term of twelve months, and to be given up at any time when required after the 4th day of December, 1816. The said Adams agrees, for the use of said improvement, to prevent any waste of timber, and prevent any depredations being committed by any person on the said land; he also agrees to put the improvement in good farming order. As witness our hands and seals, this 4 day of December, 1815.

SAMUEL WINSTON, [SEAL.]
Agent for THOS. SOUTHCOMBE. [SEAL.]
THOMAS ADAMS. [SEAL.]

Witness: JOHN GORDON.

On the foregoing lease and agreement are the following endorsements, to wit:

Rec'd of Samuel Winston $13 50, for surveying 2,000 acres of land, in two surveys, in the name of Thos. Gaskins; one survey in the name of William Pierce, of 1,000 acres, 2,000 acres in the name of Gustavus B. Wallace. Rec'd in full, for *concurring*.

JOHN GORDON, *S. H. C.*

Dec'r 4th, 1815.

John Tenant 4,000, as survey on Green river, about three miles below an old fort, called Vienna; about one-third of the land is subject to inundation, and lays low; this part is very wet and marshy; in the land on the river there is a large *cain* break, the balance of this lays pretty well for cultivation, and is as good as land is generally. *Their* is not any squatters on it; the best of woodland; this neighborhood is averaging at about $2 per acre, and, from the best information that I can get, this tract is not worth more than $2 per acre, (that is, the part that does not overflow;) the balance is not worth any thing comparatively speaking; for information apply to John Haundley, on the road from Hartford to Hammon's ferry.

The above memorandum, by Samuel Winston, agent for James Taylor.

The deposition of Francis J. Wyatt.

The deposition of Francis J. Wyatt, taken before me, mayor of the town of Fredericksburg, in the county of Spottsylvania, in the State of Virginia, on the 25th day of November, in the year 1844, at the office of Lawrence W. Berry, in the town of Fredericksburg, in the county of Spotsylvania, and State of Virginia, to be read as evidence in a certain suit in chancery depending in the circuit court of the United States for the 8 circuit and Kentucky district, holden in Frankfort, wherein James Taylor is complainant, and the heirs of Robt. Patton, deceased, defd'ts. The said deponent, being first carefully examined, and cautioned, and sworn to tell the whole truth, doth depose and say:

Question by counsel, for compl't. Were you acquainted with the handwriting of Robt. W. Patton, formerly of Fredericksburg, deceased?

Answer. I was; having hired as his clerk, and often saw him write.

Question 2d. Can you say in whose handwriting is the name of *Robt. Patton*, signed to the letter now shewn you, marked (A,) to be attached to your deposition.

Answer. I believe it to be the handwriting of said Robert Patton.

Question 3d. Can you say what were the circumstances of the said Robert Patton at the time of his death; was he solvent or insolvent?

Answer. I believe he was insolvent.

Question 4th. Are you acquainted with the handwriting of Hugh M. Patton?

Answer. I am; having frequently *saw* him write.

Question 5th. Can you say in whose handwriting is the letter now shown to you, marked (B,) to be attached to your deposition?

Answer. I believe it to be the handwriting of the said Hugh M. Patton.

FRANCIS I. WYATT.

I, Robert B. Semple, mayor of the town of Fredericksburg, in the county of Spotsylvania, and State of Virginia, do hereby certify, that at the request of the complainant I caused the above named Francis I. Wyatt, deponent in the foregoing deposition, to come before me, at the time and place in the caption stated, *stated* and, in pursuance of the notice hereto attached, that the witness was by me carefully examined, cautioned, and sworn then and there to testify the whole truth; that the said deposition was wholly reduced to writing by the said deponent in my presence, and that he then and there, in my presence, subscribed the same; that I am not counsel or attorney for either of the parties, or interested in the event of the suit; all of which is certified to the said court as the cause wherefore this deposition is taken, and for the manner it is done.

In testimony whereof I have hereto subscribed my name, and affixed the seal of my office, this 25th day of November, 1844.

[L. S.] R. B. SEMPLE, *Mayor*.

The following is the letter, marked (A,) mentioned in the foregoing deposition, to wit:

Letter, marked (A.)

GEN. JAMES TAYLOR: *Fredericksburg, 13th July*, 1818.

DEAR SIR: I am favored with yours of the 22d of June, and not less surprised than you seem to be about the 2,000 acres of land, in name of Thomas Gaskins, offered you, the 17 of March last year, at 15s. per acre; and, in yours of the 5th of July, you advise me take $4,000, as the lands in that quarter were generally of an inferior quality, and could not rise in value. In that month I wrote to you that I would not take less than 15s. per acre; to this letter, tho' one was requested, I never had any reply, nor did you ever say you would accept my offer, until the 30 of January, 6 months after the last offer was made, for the letter of the 18 December was only putting you in mind of the offer made in July. This letter, I will candidly acknowledge, I did not remember having written, not having kept any copy. There is something in the extended delay of your answer which I do not like, nor do I think it right, but I am anxious to avoid all misunderstanding, and, during my whole life, have never stood on trifles. You may, therefore, have the land at 17s. per acre, one-half payable in 12 months from the time my offer was renewed, and the remainder 12 months afterwards. Your own bonds will be considered as sufficient security for the amount. By this decision I am placed in an awkard situation with the young man with whom I made a conditional contract, and who has not, as I am informed of, returned from that county.

The land patents are in the name of Thomas Gaskins, for whose services the land was rendered, were by him to William Forbes, and by

him to Hicks & Campbell, of whom I received and will give you a deed, with a warrantee, as soon as you reply to this letter. I hope Willis's representatives will not buy, and you are at liberty take any lot you think best, but I will not take 15s. for any part of it. What has been done with the Cabin creek land, the balance of the 1,000 acres saved from the fangs of Mr. Sneed, that I am informed is good in quality and in a favorable situation? The account you want was forwarded in my last, when I also wrote Mr. Barry respecting Morgan's land, and from whom I should be glad to hear as soon as he has looked into the business and has conversed with Marshall respecting his views of the case.

I am, your most ob't sv't,

ROB'T. PATTON.

GEN. JAMES TAYLOR, *Newport, Ky.*,
Via Washington and Marietta.

Letter marked B.

Letter marked B, referred to in the foregoing depo'n, to wit:

Frankfort, 28 *May*, 1819.

DEAR SIR: I am unable to make any other arrangement with the Bledsoes, who hold a judgment vs. father, than by an assignment of your bonds, which I am extremely sorry for, as it may put you to some inconvenience, but my situation is such that it must be done; any advance that you may be under for my father will be promptly paid by your draft on him, which must be done by you. I shall leave this for Lexington to-morrow, and *immediate* to the Green River country and to my father's land in Knox county, and shall be in Lex. again in about a month, and shall return home either by the way of Cincinnati or Limestone.

With my compliments to your good family, I remain your most ob't serv't,

HUGH M. PATTON.

Excuse this scroll—I have an awful pen.

Depo'n of Samuel Woodson.

The deposition of Samuel Woodson, taken before Thos. W. Campbell, one of the judges of the county court of Hopkins, in the Com'lth of Kentucky, on the 15th January, 1845, at the clerk's office of the Hopkins circuit court, in the town of Madisonville, in the county aforesaid, to be read as evidence in a certain suit in chancery depending in the circuit court of the United States for the 8th circuit and Kentucky district, holden in Frankfort, wherein James Taylor is complainant, and the heirs of Robert Patton, deceased, are defendants.

The deponent being first carefully examined, and cautioned, and sworn to tell the whole truth, doth depose and say, that he lives a greater distance from the said town of Frankfort than one hundred miles. Furthermore, he saith, he became acquainted with the land in controversy in this cause many years ago, say twenty-five; it consists

of two tracts or surveys, of 1,000 acres each, adjoining; that he is not acquainted with all its boundaries, but has traced two of its lines, he thinks, from end to end; this was some 3 or 4 years ago; that he was informed and believes that a man by the name of Orr raised a crop on said land in 1825, and he presumes resided on it. In the year 1829 Orr resided on the said land, and stated to deponent that he had been placed on the land by the late Judge Alney McLean, of Greenville, Kentucky, who claimed 900 acres out of the 2,000 by purchase for the direct tax. McLean claimed as assignee of David Campbell, as appears by a deed from John H. Morton, collector of the 2d collection district in the State of Kentucky, to said McLean, of record in the clerk's office of the Hopkins county court, an attested copy of which deed, marked (A,) is hereto attached and made part of this deposition.

The deponent further states, that, as early as March, 1830, Judge McLean informed him that he, McLean, had authorized Orr to go on said land. The land conveyed by Morton to McLean, as above stated, was listed by the assessor, Davis, as an entire tract of 2,000 acres of improved land owned by Thomas Gaskins, lying and being within the fifth district of the State of Ky., in the county of Hopkins, on the waters of Tradewater, as appears from the said deed from the said Morton to McLean, but the deponent believes, and has no doubt, but that the land thus conveyed is the identical land conveyed by Robt. Patton and Ann G. Patton, his wife, to James Taylor, by deed bearing date the 3d day of September, 1818, and of record in the clerk's office of the Hopkins county court, in which deed the said land is described as two several tracts of land of 1,000 acres each.

The deponent further states, that he was appointed by Gen'l James Taylor, by power of att'y bearing date the 18 day of August, 1829, his agent or attorney in fact to take possession of, and lease out said 2,000 acres of land; but deponent has been unable to make said land yield but little profit, for the reason that there is but a small portion of said land cleared; and he found the improvements, houses, fences, &c., in a dilapidated state, and has been compelled to apply much of the rents to paying for repairs, the said improvements having been once, and deponent thinks twice, destroyed by fire, particularly the houses. Deponent has received for rent, in all, $120, out of which he has paid for repairs the sum of $47 50. For the last three or four years there has been no tenant on the land, or since the houses were destroyed. It is very difficult to rent or lease lands in this section on almost any terms, owing, I presume, mainly to the cheapness of land. And further this deponent saith not.

SAM. WOODSON.

I, Thomas W. Campbell, one of the justices of the peace of the Commonwealth of Ky. in and for the county of Hopkins, duly commissioned, sworn, and acting as such, and by law, and by virtue of my said commission, one of the judges of the county court of said county, and acting as such, do certify, that, at the request of compl't, I caused the

above named Samuel Woodson, deponent in the foregoing deposition, to come before me at the time and place in the caption stated, because the said witness lives a greater distance from the said town of Frankfort than one hundred miles, as he has stated, and I believe. I did not cause any notice to be given to the adverse party of the time of taking this deposition, because the said adverse party does not, as I know or believe, reside within one hundred miles of the place of taking the same, nor has said party any agent or attorney known to me within that distance. That the said witness was by me carefully examined, cautioned, and sworn, then and there to testify the whole truth. That the said deposition was wholly reduced to writing in my presence by the said deponent; and that he then and there, in my presence, subscribed the same. That I am not counsel or attorney for either of the parties, or interested in the event of the suit. All of which is certified to said court as the cause wherefore this deposition is taken, and for the manner it is done.

Justice's fees, $1; paid.

THOS. W. CAMPBELL, *J. P.*,
Hopkins county, Ky.

Deed from Jno. H. Morton, collector, to Alney McLean.

The following is the deed of Morton, collector of direct tax, to Alney McLean, referred to in the foregoing deposition of Sam. Woodson, to wit:

This indenture, made this 23d day of December, 1823, between John H. Morton, collector of the second collection district, in the State of Ky., and collector designated by the Secretary of the Treasury of the United States of America, in pursuance to the provisions of the act of Congress of the United States of the 22nd July, 1813, and of the 9th January, 1815, of the one part, and Alney McLean, assignee of David Campbell, of the county of Muhlenburg, and State of Ky., of the other part, witnesseth: that whereas a certain tract or parcel of land, situate, lying, and being in the county of Hopkins, in the fifth collection district, was returned to the said Jno. H. Morton by Benj. Field, collector of said collection district, in the words and figures following, to wit:

List of lands, with their improvements, dwelling-houses, &c., owned by Thos. Gaskins, on the 18th day of Ap'l, 1815, lying and being within the fifth district of the State of Kentucky, in the county of Hopkins, two thousand acres of improved land, on the waters of Trade Water, valued at $4,000. Thomas Gaskins is not a resident of my district, nor my agent; and I have made this list from the best information.

THOMAS DAVIS.

And whereas the said Thomas Gaskins, the owner thereof, having failed to pay the taxes, &c., due thereon, within the time prescribed by the acts of the Congress aforesaid, to the said John H. Morton, or any other person for him, he, the said Jno. H. Morton, as collector as aforesaid, having first duly advertised the same according to law, did, on the

22d day of May, 1817, at his office in Lexington, cause the said tract of land to be exposed to public sale, agreeably to his advertisements and the acts of Congress of the U. States in the case, made to the highest bidder, when and where the said David Campbell became the purchaser of 900 acres part thereof, to be laid off in the following manner, (viz.,) to commence at the most northwardly angle of the tract, and to extend on the existing lines on the right, and on the left of that angle, so far respectively that straight lines, set off one on each side of the said angle from the old lines, shall intersect and form a right angle in the *doly* of the tract; and shall, together with the old lines, include the quantity sold in a square form, as nearly as may be; and, in case there shall be two or more angles equally northwardly, then a due east and west line to be run across the tracts as to lay off the quantity sold on the north end or side. If a house is situated on the northwardly part of the tract, then the part sold may be taken from the most southwardly part thereof for the sum of $\$18\frac{72}{100}$, that being the am't of the taxes, additions, and costs due and owing on the said tract or parcel of land, as will more fully and better appear by the certificate of sale in the words and figures following, to wit:

Rec'd, this 22d day of May, 1817, from David Campbell, the sum of $18 72, being the purchase-money for a tract of land in Hopkin's county, in the 5th district of Ky., containing 900 acres—part of 2,000 acres on Trade Water, sold under the act of Congress of January 9th, 1815, to satisfy the direct tax, and additions thereto, due by Thos. Gaskins for tax.

JOHN H. MORTON.

$15 60	Collector designated by the Sec-
Add 20 per ct. thereto 3 12	retary of the Treasury, in the
	State of Ky., this 21st November,
$18 72	1823.

And whereas the said has this day presented to the said Jno. H. Morton a certificate from the district court of the district of Ky., on said certificate of sale, in the words and figures following, to wit:

United States of America, Kentucky district, sct:

I do hereby certify, that the said tract of land remains unredeemed.
Attest: JOHN H. HANNA, *C. K. D. C.*

Also the following endorsement on said certificate:
I assign this certificate to Alney McLean.

DAVID CAMPBELL.

Now, for and in consideration of the premises, and in virtue of the power vested in the said Jno. H. Morton, collector aforesaid, by the several acts of Congress of the United States aforesaid, and 3d of March, 1817, and the appointment aforesaid, he, the said Morton, hath bargained and sold, and by these presents doth bargain, sell, alien, and convey unto the said Alney McLean, the said tract or parcel of land,

to have and to hold unto the said Alney McLean, and his heirs, forever.

In witness whereof, the said Jno. H. Morton, collector as aforesaid, hath hereunto set his hand and affixed his seal, the day and year aforesaid.

JNO. H. MORTON. [SEAL.]

Dec'r 23, 1823.

State of Ky., Fayette county, sct:

This indenture was this day produced to me, the clerk of the court for the county aforesaid, and acknowledged by Jno. H. Morton, collector of the 2nd district, in the State of Ky., grantor therein named, to be his act and deed for the purposes therein mentioned; and the same is hereby certified, to all whom it may concern, for record.

Att: JAMES C. RODES, *Cl'k.*

State of Kentucky, Hopkins county, sct:

This indenture was produced this day to me, in my office, and with the certificate of Jas. C. Rodes, esq., thereon endorsed, authenticating the same, admitted to record.

Att: SAM. WOODSON,
Cl'k Hopkin's County Court.

A copy, attest: SAM'L WOODSON, *C. H. C. C.*
By SAM'L C. WOODSON, *D. C.*

Deposition of Samuel Woodson.

The deposition of Samuel Woodson, taken before Orlean Bishop, commissioner, for the purpose of being read in the case of James Taylor, complainant, against Patton's heirs, &c., defendants, now pending in the 8th circuit court of the United States, in and for the Ky. district, by authority of the annexed commission on the interrogatories thereto annexed, and herein transcribed, on the 4th day of March, 1845, at the clerk's office in and for the Hopkin's county court, in the town of Madisonville, in said county, State of Ky. The deponent, being of lawful age, personally known to the undersigned, and solemnly sworn and cautioned to state the whole truth, and to make true and perfect answers to the several interrogatories propounded to him in this cause, and having been duly examined, deposes and states, that he lives a greater distance from the town of Frankfort than 100 miles, and in answer to the interrogatory on behalf of the complainant:

No. 1. Are you acquainted with the parties to this suit?

Answer. I am not personally; I have corresponded with complainant.

No. 2. Were you acquainted with Rob't Patton, deceased, ancestor of defendants and his estate; if so, was he at the time of his death rich or poor; solvent or insolvent?

Deponent answers, I was not acquainted with said Robert Patton, nor do I know any thing about his circumstances.

No. 3. Were you acquainted with the handwrite of said Robert Patton and his son, Hugh M. Patton, (def'dt to this suit?)

Deponent answers, I was not.

No. 4. Have you, at any time heretofore, given your deposition to be read in this suit? If so, state the time, place, and before whom the same was taken; and give, as near as you can, the substance of said deposition; whether the statements therein made by you are true in substance and in fact.

Deponent answers, I did, on the 2d day of October, 1844, at the instance of the defendants, in the clerk's office of the Hopkins county court, in the town of Madisonville, before Orlean Bishop, esq., give my deposition, to be read in this suit. The paper hereto attached, marked (A,) contains the substance of my answers to the several written interrogatories propounded to me on that occasion by the def'dts; and I then believed, and still do believe, that the statements contained in my said answers are true in substance and in fact. On 15 Jan'y, 1845, I gave my depon. in this cause, at the instance of compl't, the substance of which is hereto attached, marked (G,) and made part of this depon. This depon. was given at the place aforesaid, before Thos. W. Campbell, esq., a justice of the peace.

No. 5. Do you know any thing concerning the title, possession, rents, and present cash value of two tracts of land patented by the State of Virginia to Thos. Gaskins, and sold by said Robert Patton to complainant, situate in the county of Hopkins, and State of Kentucky, and the same now in controversy? If so, state all you know about said land, or any part thereof.

Deponent answers, the land mentioned in the interrogatory was by deed, bearing date the 3d day of September, 1818, of record in the clerk's office of the Hopkins county court, conveyed by Robert Patton and Ann G., his wife, to the compl't, James Taylor. The late hon. Alney McLean, of Greenville, Kentucky, claimed, and, for aught I know, his heirs still claim, 900 acres out of the 2,000 acres, by purchase, for the direct tax; he claimed, as assignee of David Campbell, as appears by a deed from Jno. H. Morton, collector of the 2d collection district in the State of Ky., to him, of record in the clerk's office of the Hopkins county court, an attested copy of which deed, marked (B,) is hereto attached, and made a part of this deposition. In the year 1825, I was informed, and believe, that a man by the name of Orr raised a crop on the land, and I presume resided on it; and Judge McLean stated to me subsequently that he had authorized Orr to go on the land. This statement of McLean was made as early as March, 1830. Orr also stated to me, as early as November, 1829, that he had been placed on the land by Judge McLean. I was appointed by Gen'l Taylor, the compl't, by power of attorney, dated 18th of August, 1829, his agent or attorney in fact, to take possession of and lease out said 2,000 acres of land, but have been unable to make said land profitable, for the reason that there is but a small portion of said land cleared, and I found the improvements, houses, fences, &c., in a dilapidated condition, and have been compelled to apply much of the rents to pay for repairs, the said improvements having been once, and I think twice, destroyed

by fire, particularly the houses. In all, I have received $120 for rent, out of which I had paid $47.50 for repairs. I consider the 2,000 acres of land of good quality, and well adapted to the production of corn and tobacco; and would say that its present cash value is $2.50 or $3.00 per acre. It might command more if divided into small lots and sold on a short credit.

No. 6. State all you know of and concerning the said land, or any part thereof, being sold for direct tax, or forfeited for non-payment of tax due the United States or the State of Kentucky. And if you can give or refer to any written evidence in relation thereto, please attach same to your deposition, with such explanation as you may think proper.

The deponent answers, that branch of the interrogatory which refers to the land in contest, or any part thereof, having been sold for direct tax, has, I conceive been fully answered in my response to the 5th interrogatory. As to the said land, or any part of it, having been forfeited for the non-payment of tax, due either to the United States or State of Kentucky, I have no knowledge.

No. 7. Was a man by the name of Thomas Adams residing on said land, as the tenant of Thomas Southcombe, in the year 1815? If so, state all you know about said Adams, and said land, and the manner of his holding.

Deponent answers, I have a feint impression that a man by the name of Thos. Adams did reside on said land many years ago, but by whom he was placed on it, the time when, or how long he remained on it, I am unable to say.

No. 8. Have you, at any time, as agent of compl't, Taylor, sold any part of said land, or could any part of it have been sold, at fair price, at any time heretofore, provided the title had been undisputed? And state all you know on that subject.

Deponent answers, as agent of compl't, Taylor, I have sold no part of the land in controversy; but I am of opinion it might have been sold at a tolerably fair price, in small tracts, say of 200 or 300 acres; but I never was empowered by compl't to sell the land. It is true that, at the instance of persons wishing to purchase a part of the land, I have frequently written to compl't on the subject of his selling, but he and the applicants to purchase could not agree upon terms.

No. 9. State all you know concerning adverse claims to said land, and possession thereof under said claims.

Deponent answers, I know of no claim to the land adverse to that of compl't, save that of Judge McLean, hereinbefore set out; and there is no person now in possession of the land, or any part of it, under his, McLean's, claim.

No. 10. State all you know concerning propositions made by persons to compl't, Taylor, or his agent, to buy said land, or any part thereof; and the cause, if any, why a sale thereof was not made.

Deponent answers, propositions have been made by a Mr. *C. T. Winstead*, through the deponent, at different times since 1828, to purchase a small part of the eastern survey in the northeastern corner there-

of, but these propositions were not acceded to by complainant, for inadequacy of price, mainly, and perhaps complainant objected also to the form in which Winstead wished his purchase to lie. In 1834, Samuel Mitchell proposed to purchase, I think, the eastern survey; the price offered by him is not recollected; but, from a letter of the complainant in my possession, it must have been less than $2 50 per acre. After making this proposition, Mitchel declined purchasing. One of Winstead's propositions was, to give $600 for 200 acres, in a square in the corner of the land. This proposition was made in 1829 or 1830.

No. 11. Do you know, or can you set forth, any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause?

Deponent answers: I have stated, in my answer to the 2d interrogatory, that I was not acquainted with Robt. Patton, nor do I know any thing about his circumstances; and I here reiterate that statement; yet, if Robert Patton, the ancestor of the defendant, was the same individual who, on the 27th day of December, 1822, executed a deed of trust to Robt. Patton, jr., and Jno. M. Patton, for all his lands and debts in the State of Kentucky and Ohio, for the payment of his debts, I am forced to the conclusion that there was, at the date of said deed, something peculiar in his situation, but whether it amounted to insolvency or not, I know not. The deed of trust above alluded to is of record in the court of appeals in Frankfort, and an attested copy thereof is in my possession, and has been for several years, the same having been deposited with me by John S. Chapman, esq., late of Brandenburg, Ky., who claimed to be an agent of said trustees, or one of them. I do not know at what time Robt. Patton died, if he is dead.

No. 12. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Deponent answers: I am not aware that I know, or can set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this my examination, or the matters in question in this cause. I here refer to, and make part of this deposition, two letters written by deponent to complainant, one dated 21st November, 1825, and marked (C,) and the other dated 23d March, 1830, and marked (D;) these letters are referred to in support of some of the statements made in this deposition; they were transmitted to me by complainant, through his attorney I presume, in answer to a request for extracts to refresh my memory on the points to which they relate. And further this deponent saith not.

SAML. WOODSON.

I, Orlean Bishop, commissioner to take the acknowledgments of bail, affidavits, and the depositions of witnesses in civil causes, &c., under

the appointment of the court of the 8th circuit of the United States, Ky. district, duly sworn and acting as such, do certify, that, by virtue of said appointment, and by authority of the annexed commission, at the request of the complainant, James Taylor, I caused the above named Samuel Woodson, deponent in the foregoing deposition, to come before me, at the time and place in the caption stated, because the said witness lives at a greater distance from the town of Frankfort than 100 miles, as he stated, and I believe I did not cause any notice to be given to the adverse party of the time of taking this deposition, because the said adverse party does not, as I know or believe, reside within 100 miles of the place of taking the same, nor has said party agent or attorney known to me within that distance; that the said witness was by me carefully examined, cautioned and sworn, then and there to testify the whole truth; that the said deposition was wholly reduced to writing by me, in the presence of the said witness, and that he then and there, in my presence, subscribed the same; that the paper referred to by him as being attached to said depositions, are hereto attached; that I am not counsel or attorney for either of the parties, or interested in the event of the cause. All of which is certified to said court as the cause wherefore this disposition is taken, and for the manner it is done.

ORLEAN BISHOP, *Commissioner*.

Commissioner's fee, $1.00.

Paper marked (*A.*)

The following is the paper marked (A,) as part of the foregoing deposition, to wit:

Answer to 1st interrogatory. I am not personally acquainted with any of the parties mentioned. I have corresponded with Gen'l James Taylor.

Answer to 2d interrogatory. I do know the land mentioned; it consists of two 1000 acre surveys, adjoining. I have known it for many years, say 25, but am not acquainted with all its boundaries. I have traced two of its lines, I think, from end to end; this was perhaps 3 or 4 years ago.

Answer to 3d interrogatory. By power of attorney, bearing date the 18th August, 1829, I was appointed by Gen'l J. Taylor his agent, or attorney in fact, to take possession of and lease out said 2,000 acres of land; said power of attorney has not been revoked by Gen'l Taylor.

Answer to 4th interrogatory. Gen'l Taylor has had possession of said land for many years, by his tenants or agents, but I cannot say how long he had a tenant or tenants on it prior to the date of my agency. No part of said land has been sold by Gen. Taylor, either by himself or agents, to my knowledge.

Answer to 5th interrogatory. I have no knowledge of Gen. Taylor's having been the agent of Robt. Patton, before the conveyance of said land by Patton to him, Taylor.

Answer to 6th interrogatory. Gen. Taylor has, as I believe, claimed

said land as his own since the 3d day of September, 1818, the date of Patton's deed to him.

Answer to 8th interrogatory. Gen'l Taylor's power of attorney to me does not authorize me to sell said land, but in answer to letters written to him by me, at the instance of persons wishing to purchase a part of said land, he, Gen'l Taylor, assents to selling a part of this land, but on terms which the applicants would not comply with. I do not think he stated by what kind of warranty he would convey the land; none was, however, sold to these applicants. The assent of Gen'l Taylor to selling a part of the land in question, above spoken of, was yielded in 1833 and 1834, but in 1838 he refused to sell.

Answer to 9th interrogatory. I am not aware that I have knowledge of any fact, not above detailed, that would be serviceable to the defendants; and further saith not.

Exhibit (G,) with deposition of S. Woodson.

I became acquainted with the land in controversy in this cause many years ago, say twenty-five; it consists of two 1000 acre surveys adjoining. I am not acquainted with all its boundaries, but have traced two of its lines, I think, from end to end. This was some three or four years ago. I was informed, and believe, that a man, by the name of Orr, raised a crop on this land in the year 1825, and I presume resided on it. In the year 1829 Orr still resided on the land, and stated to me that he had been placed on it by the late Hon. Alney McLean, of Greenville, Kentucky, who claimed 900 acres out of 2,000 acres, by purchase for the direct tax; McLean claimed, as assignee of David Campbell, as appears by deed from John H. Morton, collector of the 2nd collection district in the State of Kentucky, of record in the clerk's office of the Hopkins county court; an attested copy of which deed (marked A) is hereto attached, and made part of this deposition. As early as March, 1830, Judge McLean informed me that he authorized Orr to go on said land. The land conveyed by Morton to McLean, as above stated, was listed by the assessor, Davis, as 2,000 acres of unimproved land owned by Thomas Gaskins, lying and being on the waters of Trade Water, and within the 5th district of the State of Kentucky, in the county of Hopkins, as appears from the deed from Morton to McLean; but I believe, and have no doubt but that it is the identical land conveyed by Robert Patton, and Ann G. Patton his wife, to James Taylor, by deed bearing date this 3d day of September, 1818, and of record in the clerk's office of the Hopkins county court; in which deed the said land is described as two several tracts of 1,000 acres each. I was appointed by General James Taylor, by power of attorney bearing date the 18th day of August, 1829, his agent, or attorney in fact, to take possession of, and lease out said 2,000 acres of land, but I have been unable to *to* make said land yield but little profit, for the reason that there is but a small portion of said land cleared; and I found the improvements—houses, fences, &c.—in a dilapidated condition, and have been compelled to apply much of the rents to paying for repairs;

the said improvements having been once, and I think twice, destroyed by fire, particularly the houses. In all I have received $120 for rent, out of which I have paid for repairs $47 50. For the last three or four years there has been no tenant on the land, or since the house was last destroyed. It is very difficult to rent or lease land in this section on almost any terms, owing, I presume, mainly to the cheapness of land.

Deed B, from Morton to McLean.

The copy of the deed referred to in the foregoing depo'n of Samuel Woodson as being marked (B,) and made part thereof, is heretofore copied in this record, pages 57, 58, and 59; see it.

The following are the letters referred to in, and made part of, the deposition of Samuel Woodson, marked (C and D,) to wit:

Letter D.

MADISONVILLE, 23 *March*, 1830.

DEAR SIR: I believe I informed you, several years since, that Alney McLean, esq., of Greenville, claims a part of each of said tracts of land in the name of Gaskins, under purchases for the direct tax. I saw Mr. McLean yesterday, and conversed with him relative to his claims. He states that he is anxious to settle the matter with you on available terms; he would prefer selling to you, and will take $500 for his claim, and requested me to say as much to you. I think he claims in all 900 or 1,000 acres. I stated to you in my last some propositions of a Mr. Winstead, as to purchasing a part of your land, but have received no answer; possibly my letter did not reach you. He offers $600 for 200 acres in a square, to lie in a corner of one of the surveys. Judge McLean informs me he authorized Orr to go on the land; if so, is it worth while to sue? particularly as Orr is of that description of persons who will pay or not as he may elect, although you might have a judgment against him. Yours, very respectfully,

SAMUEL WOODSON.

Letter marked "C."

MADISONVILLE, 21*st November*, 1825.

DEAR SIR: Your letter, dated 8th ultimo, has been received, and in reply thereto I have to state, that I have no objections to attending to your two tracts of land in the name of Thomas Gaskins, and the one in the name of Pearce; the others are too distant for me to attend to them with convenience. I would name E. Givens, esq., as a proper person to attend to the tract opposite Belleville, and John B. Reily to that on Deer creek; Mr. William Adams has removed to Missouri, but previous to his setting out he saw your letter to me, and informed me that Haralson had received no rent from Bland; he also stated that Orr had raised, as he was informed, about 70 barrels of corn the present year; yet the chance to get the rent out of him I deem a bad one, but will make the attempt. Bland's is, I imagine, altogether a hopeless case. As it may be necessary to use some legal measures against Orr,

I would prefer having a regular power of attorney from you. I would suggest to you, that a part of the Gaskins tracts were sold for the direct tax, and conveyed to the Hon. A. McLean, of Greenville.

Yours, very respectfully,

SAMUEL WOODSON.

Interrogatories to Francis J. Wyatt.

The complainant, Taylor, proposes the following interrogatories to Francis J. Wyatt and others, to testify in behalf of complainant:

1st. Are you acquainted with the parties to this suit?

2nd. Were you acquainted with Robert Patton, deceased, ancestor of defendants, and his estate; if so, was he, at the time of his death, rich or poor, solvent or insolvent?

3d. Were you acquainted with the handwrite of said Robert Patton, and his son Hugh M. Patton, (defendant to this suit?)

4th. Have you at any time heretofore given your deposition to be read in this suit? If so, state the time, place, and before whom the same was taken, and give, as near as you can, the substance of said deposition, whether the statements therein made by you are true in substance and in fact.

5th. Do you know any thing concerning the title, possession, rents, and present cash value of two tracts of land patented by the State of Virginia to Thomas Gaskins, and sold by said Robert Patton to complainant, situate in the county of Hopkins, and State of Kentucky, and the same now in controversy? If so, state all you know about said land, or any part thereof.

6th. State all you know of and concerning said land, or any part thereof, being sold for direct tax, or forfeited for the non-payment of tax due the United States or the State of Kentucky; and if you can give or refer to any written evidence in relation thereto, please attach same to your deposition, with such explanations as you may think proper.

7th. Was a man by the name of Thomas Adams residing on said land as the tenant of Thomas Southcombe, in the year 1815? If so, state all you know about said Adams and said land, and the manner of his holding.

8th. Have you at any time as agent of complainant, Taylor, sold any part of said land, or could any part of it have been sold at fair price at any time heretofore, provided the title had been undisputed? And state all you know on that subject.

9th. State all you know concerning adverse claims to said land, and possession thereof under said claims.

10th. State all you know concerning propositions made by persons to complainant, Taylor, or his agent, to buy said land, or any part thereof, and the cause, if any, why a sale thereof was not made.

11th. State all you know or believe would, or might be, pertinent to the matters in controversy, and beneficial to the complainant in the support of his cause.

12th. Do you know, or can you set forth any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

O. G. CATES,
Attorney for complainant.

A copy.—Attest:

JNO. H. HANNA,
C. C. C. K. D.

Deposition of Francis J. Wyatt.

The deposition of Francis J. Wyatt, taken before me, Robt B. Semple, mayor of the town of Fredericksburg, in the State of Virginia, on the 24th day of February, 1845, at the mayor's office in the said town, to be read as evidence in a certain suit in chancery, in the circuit court of the United States for the 8th circuit and Ky. district, holden in Frankfort, wherein James Taylor is complainant, and the heirs of Robert Patton, deceased, and others, are defendants, in pursuance of a commission to me directed from the said court, bearing date the 22d day of January, 1845. The said deponent being first carefully examined, and cautioned, and sworn to tell the whole truth, in answer to the interrogatories hereto annexed, doth depose and say, in answer to interrogatory the 1st:

Answer. I am acquainted with the heirs of Robt. Patton, deceased, but not with Jas. Taylor.

Answer to int. 2d. I was acquainted with Robt. Patton, deceased; and believe he was insolvent at the time of his death.

Answer to int. 3d. I was acquainted with the handwriting of said Robt. Patton, and am also acquainted with that of his son, Hugh M. Patton.

Answer to int. 4th. I gave my deposition some time within the last three months, (cannot recollect the day,) at the office of Lawrence W. Berry, esq., before Robt. B. Semple, mayor of this town, and then certified to the signature of Robt. Patton, to some paper presented to me; and also certified to the handwriting of Hugh M. Patton, in a letter from him, both which papers were attached to, or connected with, the said deposition; and also, I think, I then stated my belief, that the said Robt. Patton was insolvent at the time of his death; and that I had lived as clerk of said Robt. Patton for several years; and what I then was in substance and in fact true; farther I recollect not.

To interrogatories 5, 6, 7, 8, 9, 10, 11, & 12, I answer, that I know nothing.

FRANCIS J. WYATT.

I, R. B. Semple, mayor of the town of Fredericksburg, in the county of Spotsylvania, and State of Virginia, do hereby certify, that, at the request of the complainant, I have caused the above named Francis J. Wyatt, deponent in the foregoing deposition, to come before me, at the time and place in the caption stated, and, in pursuance of the commis-

sion hereto attached; that the witness was by me carefully examined, cautioned and sworn, then and there to testify the whole truth, in answer to the interrogatories hereto annexed; that the said deposition was wholly reduced to writing by said deponent in my presence, and that he then and there in my presence subscribed the same; that I am not counsel or attorney for either of the parties, or interested in the event of the suit; all of which is certified to the said court as the cause wherefore this deposition is taken, and the manner it is done.

In testimony whereof I have hereto subscribed my name, and affixed the seal of my office, this 24th February, 1845.

[L. S.]

R. B. SEMPLE, *Mayor*.

Deposition of James E. Davis.

The deposition of James E. Davis, taken before James L. Hickman, one of the justices of the peace in Fayette county, in the Commonwealth of Ky., on the 21st day of October, 1844, at the office of Samuel K. Bullock, in the city of Lexington, State of Kentucky, in the county aforesaid, to be read as evidence in a certain suit, depending in the circuit court of the United States for the 7th circuit and Ky. district, holden in Frankfort, wherein James Taylor is complainant, and Robt. Patton's heirs are defendants. The said deponent being first carefully examined, cautioned, and sworn to tell the whole truth, doth depose and say:

Question by complainant. Were you or not acquainted with Theodore F. Talbott; and where did he reside in 1819 to 1823; and what was his occupation?

Answer. I was acquainted with Theodore F. Talbott; he resided in the city of Lexington, and his occupation was that of a lawyer.

Queston by same. At the time he left Lexington, what was his general moral character for honesty and truth?

Answer. Theodore F. Talbot came from New York here as the successor of Judge McKinley, in his practice, when he, (McKinley,) moved from this place to Alabama; he lived here several years during a large portion of the time; said Talbott appeared to be an industrious, trusty man, and I believe, stood fair about the time he left here, and afterwards his character was considered bad for truth and everything; he was a very religious man; a great brag; he broke and ran away, and was considered at the time, and afterwards, a great hypocrite and liar; I do not remember the year he came to Lexington, it was before the year 1819; and he left here after the year 1820.

Question by same. From your knowledge of his general character, (moral,) was he or not worthy of credit when on oath in a court of justice?

Answer. While Mr. Talbott was flourishing in the town of Lexington, up to about the time he left here, although I considered him a great brag and boast, I should have given credit to his oath; but after his departure, which was considered disgraceful, having defrauded and deceived so many, I should have required corroborating circumstances to

have given full credit to anything that might have been said by him; this was the light in which he was generally viewed when he left here.

Question by same. Will you state whether or not the notice of the assignment, herewith filed as part of this deposition and marked (A,) is in the handwriting of Theodore F. Talbott?

Answer. I believe it to be his writing.

Question by same. Are you or not familiar with the handwriting of said Talbott?

Answer. I know his writing well.

JAMES E. DAVIS.

The following is the copy of the notice of assignment, mentioned in the foregoing deposition, to wit.

Notice of assignment.

Copy.

"SIR:" A note, or sealed bill, for the sum of $2,500, due January 30, 1820, made by you to Robert Patton, has been duly assigned to me, of which please to take notice.

July 3*d*, 1819. THEODORE F. TALBOTT.

Gen. JAMES TAYLOR.

July 18*th*, 1819.

I have acknowledged service of the above to me.

THEODORE F. TALBOTT.

Deposition of Patterson Bayne.

The deposition of Patterson Bayne, taken at the same time and place.

Deponent being of lawful age, and duly sworn, deposes and says:

Question by complainant. Were you acquainted with Theodore F. Talbott, and where did he reside in 1819 to 1823, and what was his occupation?

Answer. I knew Theodore F. Talbott, but cannot state certainly that during that time he resided in the city of Lexington. He lived in Lexington several years, how long I cannot state. He was a lawyer.

Question by same. From your knowledge of his general moral character, will you state whether or not he was worthy of credit, on oath, in a court of justice.

Answer. Until within a few months before he left Lexington, how many months I do not recollect, I knew nothing of Talbott; but, some time before he left, I had reason to believe he swindled me. From that time, ever afterwards, he had the reputation of being a swindler and scoundrel. I do not recollect that I have heard, during his residence in Lex., any thing said about his credibility on oath. It was the common talk about town that he was a great rascal. I would not believe him on oath, or in any way. I believe him to be a very bad man.

PATTERSON BAYNE.

Dep'n of Mathew T. Scott.

The deposition of Mathew T. Scott, taken at the same time and place.

Deponent being of lawful age, and first duly sworn, deposes and says:

Question by complainant. At what time did you become acquainted with Theodore F. Talbott, and where did he reside in 1819 to 1823?

Answer. My best impression is, that he resided in Lexington about that time; how long I cannot state.

Question by same. What was the moral character of said Talbott, and was he or not to be believed, on oath, in a court of justice?

Answer. What credit would be given to his statement, on oath, I cannot say. Before and after he left Lexington, his character began to be spoken freely of as rather doubtful; his reputation was not fair; he was regarded as a sly, cunning, underhanded man.

M. T. SCOTT.

I, James S. Hickman, one of the justices of the peace of the Commonwealth of Ky., in and for the county of Fayette, duly commissioned and acting as such, and by law, and by virtue of my said commission, one of the justices of the county court of said county, and acting as such, do certify, that at the request of complainant I caused the above named deponents in the foregoing depositions to come before me, at the time and place in the caption stated; that the deposition of J. E. Davis was wholly reduced to writing by him in my presence, and the depositions of Patterson Bayne and M. T. Scott, by S. K. Bullock, in my presence, and in the presence of the witnesses; and that then and there the said witnesses, in my presence, subscribed their several depositions; that I am not counsel or attorney for either of the parties, or interested in the event of the cause; all of which is certified to said court, as the cause whereof this deposition is taken, or for the manner it is done.

Given under my hand, this 21st October, 1844.

JAMES S. HICKMAN, *J. P.*

Justice's fees, $1; paid by S. K. Bullock, for complainant.

JAS. S. HICKMAN, *J. P.*

Deposition of Theodore F. Talbott.

Theodore F. Talbott, being duly sworn, deposeth and saith: That some time ago he, for Witherspoon and Muirhead, then of Philadelphia, recovered against William West, of Lexington, Ky., two judgments for large sums, to wit, $4,000 and upwards; that said West, being unable to pay the amount of said judgments, proposed to assign to this deponent, for the use of said Witherspoon & Muirhead, a decree of the circuit court of the United States for the district of Kentucky, obtained by the heirs of Bledsoe, against Robert Patton, of Fredericksburg, Virginia, which had been or was about to be assigned to him by the said heirs; and, after inquiring as to the solvency of said Patton, this deponent agreed to accept thereof as security from West, and to postpone further proceedings against him on said judgments; and in pursuance of said agreement, eight-tenths of said decree was duly assigned to West,

and by West to this deponent, for the use of said Witherspoon and Muirhead, in part security of said judgments; that soon after receiving the transfers aforesaid, he addressed a letter to Robert Patton, informing him of said assignment, and requesting a settlement of the decree, and received from said Patton a letter, mentioning his intention of sending his son out to Kentucky to settle the same.

In the month of June, 1819, Hugh Patton, the son and agent of the said Robert Patton, arrived in Frankfort, and made application to deponent for accommodation or indulgence, as to time, in paying the amount of said decree. On examination, it appeared that two tenth parts of said decree were not duly assigned to this deponent, and it was considered important for this deponent's clients and Patton to settle with the persons holding the said two-tenth parts, and to enable the said Hugh Patton to satisfy the same, this deponent endorsed his bills of exchange on his father, for the sum of eight hundred and thirty-three dollars; to secure this deponent for such endorsements, the said Hugh, as agent for the said Robert Patton, assigned to him a note made to said Robert, by James Taylor, of Newport, for the sum of two thousand five hundred dollars, then due and unpaid, (which note is now on file in the office of the clerk of said court.) On or about the 3d day of July, 1819, or shortly before that time, James Taylor called with said Hugh at the office of this deponent, in Lexington, and there proposed, and finally gave, to this deponent his bond or writing of indemnity for said endorsement, to induce this deponent to give up the said note; and at the same time he observed that the said Robert Patton was a solvent man, and he had no reluctance to become bound for him, and added other expressions calculated to impress this deponent with a good opinion of the correctness and integrity of said Robert Patton, and his abundant solvency.

The said note was then delivered up to the said Hugh Patton. The said James Taylor, then, in the presence and in the office of this deponent, wrote a check on the Farmers and Merchants' Bank of Lexington for the sum of $1,500, in part payment of said note; and a receipt for that amount was written on the back, not of the said note, but of another note then held by this deponent for the same amount, but due on the 30th January then next. The said notes were nearly similar, and the mistake was not observed at the time. Both notes were then assigned to and in the possession of this deponent as security for the said endorsements, and for the amount of said decree. But as the amount of the notes exceeded the amount due from Patton, this deponent had agreed that said Hugh Patton might receive from said Taylor the overplus. At that time much conversation took place respecting the payments of said notes; and the satisfaction of said decree by said Patton, through or by means of said notes; in the course of which conversation was distinctly mentioned and understood by all parties, that this deponent held or had the management of a decree against Robt. Patton for a large sum of money; that said Hugh Patton came to Kentucky for the purpose of arranging the same with this deponent, and that he had

or was about to transfer the two notes of said Taylor to this deponent, as security for the amount of said decree; that an execution had been issued against the estate of said Patton, at the request of the heirs of Bledsoe, who had not joined in the assignment of the decree to West; that to prevent him from proceeding on said execution, this deponent had assisted the said Hugh to raise the amount of said two-tenths of said decree by endorsing said bills of exchange, and had agreed not to enforce said execution for a short time, until an arrangement could be made by him to secure the amount. Very soon after giving said check for the said sum of $1,500, the said James Taylor and said Hugh returned to this deponent's office, and from their conversation it appeared that said check could not be paid at bank, and the said Taylor then wrote another check for six hundred dollars only, which he gave to Patton, and asked this deponent for the note on which the receipt had been written, that it might be altered. This respondent accordingly handed him the note, when he discovered that the receipt had been written on the note not then due. He then asked for the other note, which this deponent handed from his paper case, on which said Taylor or Patton wrote a memorandum or receipt for the said sum of six hundred dollars, and he then tore up the other note, and wrote a new note dated that day, but payable on the same day as the old note, which new note the said Hugh then in his presence assigned to and handed this deponent. While the said James Taylor was writing the new note, this deponent stopped him, and urged him to give one or more notes for the amount payable at bank; but said Taylor observed, jestingly, that if he gave the notes he should not be able to pay them; but afterwards declined, because he said there might be some difficulty as to the kind of money the bank would receive, and the non-payment of the notes might injure his credit, or otherwise plague him. Throughout all the interviews, the said James Taylor did not, to the recollection or belief of this deponent, intimate the slightest objection to the validity of said notes, or the most distant intention of contesting the payment of them; on the contrary, he appeared desirous that this deponent should wait on said Patton, and get the money from the payment of said notes. This deponent finally agreed with Hugh Patton to take no steps on said decree until after the second note of Taylor should become due, and he did so under a full belief that the amount due on said notes would be paid to him by said Taylor. Immediately after the said Taylor and Hugh Patton had left the office of this deponent, he sat down and wrote a notice of the assignment of the new or second note, in order to get from Genl. Taylor an admission of notice thereof as a proper measure of precaution in case of death; but as the other note was then due, and in part paid, he did not include it in the assignment, because Genl. Taylor was going to Louisville, and had intimated a probability that he would pay the balance, or most of it, on his return from there to Lexington. Genl. Taylor then left Lexington before this deponent had an opportunity of seeing him. On the 15th day of July, 1819, this deponent saw Genl. Taylor in Lexington, and got from him the admission hereto annexed,

and then pressed him to fix a day or time for payment of the balance due on the first note. During that conversation, said Taylor did not intimate any objection to the payment of said notes. After the second note fell due, this deponent addressed one or more letters to said Taylor, requesting payment of said notes, but received no answers. One of the said bills was returned protested, and some considerable time thereafter General Taylor again visited Lexington, and made an arrangement with the holders of the bill, and then called on this deponent to get a credit for the amount of said bill of exchange, and take up his bond of indemnity, and also for the amount or sum of $450, or thereabouts, for advances made by him for Robt. Patton; and he then, for the first time intimated an objection to the payment of the residue of the notes, because the title of the land for which he had given them was not perfect. This deponent expressed to Taylor his confidence that the notes would be paid, and he parted from him without any idea that he seriously meant to resist the payment of them. This deponent further saith, that he holds the said notes and the judgments thereon as security for Witherspoon & Muirhead, late of Philadelphia, who, he was lately informed, sold the goods to West, as agents for a house in England. That he has no interest in the suit, or the event thereof, (having received his fees in part,) excepting such further compensation as he may be entitled to receive for his services. Robt. Patton has no control over the judgments, and has some time ago become insolvent, and assigned all his estate to trustees. The said West is utterly and hopelessly insolvent, and owes to the said Witherspoon & Muirhead a considerable sum beyond that amount due from Patton. This deponent has no conditional or contingent fee depending on the event of this suit, or the recovery of the money.

Question by complainant. Did not the complainant express his dissatisfaction at the transfer of these notes, and did not you understand that that was his object in giving the guarantee to said Hugh Patton's draft on his father?

Answer. I have no recollection of his expressing the slightest dissatisfaction at my holding the notes; but I think I understood that his motive for relieving the notes from the lien on account of said endorsements was, that he wished to take up the notes at some discount, which Hugh Patton had offered to make me for my client, if I would take them at his risk.

Question by same. At the time you demanded payment of the complainant of the draft, had you not rec'd advice, that the money was forwarded to Baltimore to take up the draft, and you requested to redraw, and was this fact not communicated to the compl't after the payment of the draft, and did not the said complainant complain of your conduct, and did you not observe, that you did not mean to risk another protest?

Answer. Some time after the bill returned protested, Hugh Patton wrote to me to account for the protest of the bill, and said his father had sent the money to Baltimore to take up the bill, but found it had

been sent back, and he urged me to get the amount from Gen'l Taylor, if possible; but said, that if I could not get it from him, I could draw on his father, after Gen'l Taylor had arranged with the holders of the bill for its payment. I casually mentioned, that I considered myself as running no risk, because, besides his indemnity, I was authorized to draw on Patton, in case I could not receive the amount from the General. I recollect no complaint of the Gen'l, nor any remark as to risking another protest; for I then felt confident that there was no risk of a protest had I drawn.

Question by same. Are you not to have a commission on the money if you recover it; and what per cent.?

Answer. I had no agreement for my compensation in collecting the money, or managing the suits; they were handed to me by Mr. Clifford, deceased, and I never saw the plaintiffs, and never made any agreement with them, directly or indirectly; if I had rec'd the money, I should have charged five per cent. commission on the amount, and expect to charge that amount if I receive the money.

Question by same. What fee have you already received, and when did you receive it; was it not from the money paid by me on my note alluded to?

Answer. I have never received any fee from Patton; I collected a small sum for my clients from another source; I never received a cent of the money paid by Gen'l Taylor. I do not feel myself bound, and therefore decline, to answer how much money I have received from my clients, or when.

Question by the same. Did you not bring the suits against the complainant on the notes, and have you not managed the suit in chancery for Patton, and will not the suit be still under your control?

Answer. I brought the suits at law; I defended the suit in chancery, and shall probably continue to do so if I return to Kentucky; but I have no control over the suits, excepting what an attorney or counsel have in all cases.

THEODORE F. TALBOTT.

State of Ohio, city of Cincinnati, sct:

On the 3d day of April, 1823, before me, Isaac G. Burnett, mayor of the said city, personally appeared Theodore F. Talbott, and was by me carefully examined, and cautioned, and sworn to testify the whole truth, and subscribed the testimony by him given, the same having been reduced to writing in my presence by him; the said deposition being taken to be used in a certain suit in chancery now depending in the seventh circuit court of the United States, for the district of Kentucky, on behalf of the defendants, in which suit James Taylor is complainant, and Robert Patton is defendant. The said witness living more than one hundred miles from the place of trial, to wit, in the city of Philadelphia, is the cause of taking said deposition. The said James Taylor attended and put interrogatories to the witness, having been duly notified of the time and place of taking said deposition.

I certify that I am not counsel or attorney for either of the parties in the above mentioned suit, nor interested in the event of the same.

In witness whereof, I have hereto set my hand and seal of office, this [L. S.] 3d day of April, 1822.

ISAAC G. BURNETT, *Mayor*.

Deposition of Samuel Woodson.

The deposition of Samuel Woodson, taken for the purpose of being read in the case of James Taylor, complainant, against Robert Patton's heirs, defendants, now pending in the 8th circuit court of the United States, in and for the Kentucky district, by authority of the annexed commission, on the interrogatories thereto annexed, and herein transcribed on the 2nd day of October, 1844, at the county court clerk's office, for Hopkins county, in the town of Madisonville, State of Kentucky. The deponent being of lawful age, personally known to the undersigned, and solemnly sworn and cautioned to state the whole truth, and to make true and perfect answers to the several interrogatories propounded to him in this case, and having been duly examined, deposes and states: The deponent, Samuel Woodson aforesaid, produced on behalf of the defendants, that he lives a greater distance than 100 miles from the town of Frankfort, and in answer to the interrrogatories on behalf of the defendant:

No. 1. Do you know the parties to this suit, to wit, Gen'l James Taylor, and the heirs of Robert Patton of Virginia, or any of them? If you do, which of them?

Answer. I am not personally acquainted with any of the parties mentioned; I have corresponded with Gen. Taylor.

No. 2. Do you or not know a tract of land of 2000 acres, lying in the county of Hopkins, and State of Kentucky, deeded by Robert Patton to James Taylor? If so, how long have you been acquainted with said tract of land?

Answer. I do know the land mentioned; it consists of two 1000 acre surveys adjoining; I have known it for many years, say 25, but am not acquainted with all its boundaries; I have traced two of its lines, I think from end to end; this was perhaps 3 or 4 years ago.

No. 3. Have you or not been for some time past, or were you or not the agent of said James Taylor, to attend to said tract of land, to rent, sell, or take care of, or lease said land? If so, how long ago; are you now his agent; if not, when did your agency cease, if it has ceased?

Answer. By power of attorney, bearing date the 18th August, 1829, I was appointed by Gen'l James Taylor, his agent or attorney in fact, to take possession of and lease out said 2000 acres of land; said power of attorney has not been revoked by Gen. Taylor.

No. 4. Has or has not said James Taylor had the possession of said tract of land for many years, by his tenants or agents? If so, how long; and has or has not said Taylor, by himself or agents, sold all or part of said tract of land? If so, how much, to whom, and when, is it conveyed?

Deponent answers. Gen. Taylor has had possession of said land for many years, by his tenants or agents; but I cannot state how long he had a tenant or tenants on it prior to the date of my agency; no part of said land has been sold by Gen'l Taylor, either by himself or agents, to my knowledge.

No. 5. Do you or not know, that said James Taylor was the agent of Robert Patton before said land was conveyed to him, said Taylor? State all you know on this subject.

Deponent answers. I have no knowledge of Gen'l Taylor's having been the agent of Robert Patton, before the conveyance of said land by Patton to him, Taylor.

No. 6. Do you or not know, that said James Taylor has claimed said tract of land as his own, in virtue of his purchase and conveyance from Robert Patton for a great many years, and even from the date of deed from Patton, and how long?

Deponent answers. Gen. James Taylor has, I believe, claimed said land as his own since the 3d day of September, 1818, the date of Patton's deed to him.

No. 8. Has or has not James Taylor authorized you to sell the whole or part of said tract of land, and authorized you to contract for a good and valid fee simple title, with general warranty? If yea, when; and have you made such sale?

Deponent answers. Gen. Taylor's power of attorney to me does not authorize me to sell said land; but, in answers to letters written to him by me, at the instance of persons wishing to purchase a part of said land, he (Gen. Taylor) assents to selling a part of the land, but on terms which the applicants would not comply with; I do not think he stated by what kind of warranty he would convey the land; none was however sold to these applicants. The assent of Gen. Taylor to selling a part of the land in question above spoken of was yielded in 1833, or 1834; but in 1838 he refused to sell.

No. 9. State any fact that may be serviceable to the defendants, which comes within your knowledge.

Deponent answers. I am not aware that I have knowledge of any fact, not above detailed, that would be serviceable to the defendants; and further this deponent saith not.

SAM'L WOODSON.

I, Orlean Bishop, commissioner of the 8th circuit court, duly appointed, and so acting, certify, that the above named witness having been by me duly sworn, cautioned, and examined, did at the time and place stated in the caption, depose and give the above answers, and no more, to the several interrogatories so propounded to him; and that the evidence so given having been wholly reduced to writing by me in his presence, and thereupon read by me to him, was so subscribed by him in my presence; and that I am not akin to, or counsel of, either of the parties, or in any wise interested in the controversy; I did not cause any notice to be given to the adverse party of the time of taking this deposition, because the said adverse party does not, as I know or believe,

reside within one hundred miles of the place of taking the same; nor has said party agent or attorney known to me within that distance.

Given under my hand at the time and place stated in the caption.

ORLEAN BISHOP,
Commissioner.

Com'rs fee $1. O. BISHOP, *Com'r*.

United States of America,
8th circuit, *Kentucky district*, *sct:*

I, John H. Hanna, clerk of the eighth circuit court of the United States of America, in and for the Kentucky district, do hereby certify, that the foregoing pages contain a full, true, and complete transcript of the record and proceedings in the suit aforesaid.

In testimony whereof, I have hereunto subscribed my name, and [SEAL.] affixed the seal of said court, this 30th day of July, A. D. 1845.

JNO. H. HANNA.

Filed, 8th December, 1845.